Rec'd

222 Rules.

Submitted Dec. 15th.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 897.

THE LIFE ASSOCIATION OF AMERICA, WILLIAM S. RELF, SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF MISSOURI, AND DANIEL M. FROST, SPECIAL AGENT, &c., APPELLANTS,

VS.

SAMUEL E. RUNDLE AND HELEN RUNDLE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED SEPTEMBER 30, 1880.

C. 7

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1 *Transcript from the fifth district court for the parish of Orleans. Filed December 8th, 1879.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

SAMUEL E. RUNDLE ET AL.
vs.
THE LIFE ASSOCIATION OF AMERICA ET AL. } No. 8932.

STATE OF LOUISIANA.

Fifth district court for the parish of Orleans.

SAM'L E. RUNDLE & AL.
vs.
THE LIFE ASSOCIATION OF AMERICA & ALS. } No. 10253.

Petition.

To the honorable Walter H. Rogers, the judge of the fifth district court for the parish of Orleans.

The petition of Samuel E. Rundle and Helen Rundle, his wife, who resides in the city of New Orleans and State of Louisiana, against
2 the Life Association of America, a corporation incorporated under the laws of Missouri and having an office and doing business in this city of New Orleans, State of Louisiana; D. M. Frost, temporary agent or receiver of the Life Association of America, residing at St. Louis in the State of Missouri; L. E. Alexander, receiver of the Columbia Life Insurance Company of Missouri, residing at St. Louis in the State of Missouri; and John R. Fell, residing at New Orleans in the State of Louisiana, with respect shows:

That they, Samuel E. Rundle and Helen Rundle, who file this petition in behalf of themselves and all other holders of policies, or may have been issued to and held and owned by citizens resident of the State of Louisiana as may be entitled to share in the trust fund hereafter shown, who will come in and contribute to the costs and expenses of this suit according to their respective interests.

First. That they, Samuel E. Rundle and Helen Rundle, are the owners and holders of a policy of insurance issued on the 21st day of
3 August, 1877, by the Life Association of America, on the life of Helen Rundle for the sum of twenty-five hundred dollars payable to her husband, Samuel E. Rundle, sixty days after the proof of the death of Helen Rundle if living, but if the insured, meaning Helen Rundle, be living on the 1st day of October, in the year one thousand nine hundred and twenty-nine, the policy then to mature and the above stated sums shall then be paid to the aforesaid Samuel E. Rundle in accordance with certain terms and conditions contained in a policy numbered 46164, which is hereto attached and marked Exhibit A, and made a part of this petition; and further, that petitioners are the owners and holders of a policy of insurance issued on the 1st day of November, 1877, by the Life Association of America on the life of Samuel E. Rundle for the sum of four hundred and fifty dollars payable sixty days af-

ter proof of the death Samuel E. Rundle to his wife, Helen
4 Rundle if living, but if this insured, meaning Samuel E. Rundle, be living on the 1st day of November, in the year one thousand nine hundred and eighteen, this policy shall then mature and the above stated sum to be paid to Samuel E. Rundle in accordance with certain terms and conditions contained in policy numbered 47499, which is hereto attached and marked Exhibit B, and made a part of this petition; and further, that petitioners are the owners and holders of a policy of insurance issued on the 1st day of May, A. D. 1878, by the Life Association of America on the life of Samuel E. Rundle for the sum of six hundred dollars, payable sixty days after proof of the death of Samuel E. Rundle to his wife, Helen Rundle, if living, but if the insured, meaning Samuel E. Rundle, be living on the 1st day of May, in the 'ar one thousand nine hundred and eighteen, the policy then to mature, the above stated sums to be paid to Samuel E. Rundle in accordance with certain terms and conditions contained in a policy numbered 49170, which
5 is hereto annexed and marked Exhibit C and made a part of this petition. And petitioners aver that they have fully performed their parts of the covenants therein contained to the date of this petition.

Second. Said policies numbered respectively 46164, 47499, and 49170, were issued on the 24th day of August, 1st day of November, 1877, and on the 1st day of May, 1878, and were issued under an express contract by said Life Association of America, which is a body corporate under the laws of the State of Missouri, having its chief place of business at St. Louis, Missouri, whereby it is agreed that a large part of all premiums that might from time to time be paid by the holders of policies issued to and on the lives of residents of the State of Louisiana should be retained and invested from time to time as received, or as soon thereafter as practicable in the State of Louisiana, and there kept invested as a special and continuing security for the payment of all claims arising under and by virtue of said policies, as they might from time
6 to time become payable. The portion not so to be retained was small, and according to the contract, was a certain amount, not even recollected with accuracy, but an amount estimated as probably necessary to cover the expenses of general management of the aforesaid insurance business. This small proportion was not to be so retained and invested for the purpose and in the manner stated, but all over and above that sum was to be invested.

Your petitioners' best recollection is that at least seventy per cent. of the sum so received, or in any event an amount equal to seventy per centum of the recover on policies issued under said agreement, said amount increasing from year to year as the value of said policies increase, that might be so received from time to time, and a sufficient sum from year to year should be set aside and invested from time to time and held as a trust and security fund for the uses and purposes stated.

Your petitioners charge that such was the fact and that the sum stated, or some other large sum, was to be invested and held
7 in the State of Louisiana for such uses, trust, and security, according to such agreement. That petitioner further shows that in execution of said contract said Life Association of America, through its Louisiana Department, as it was called, or through other agents, trustees, or officers, did invest large sums of money in New Orleans, and other towns and cities in the State of Louisiana not now known to your petitioners, and that these investments consist of notes or other

choses in action secured by mortgage, and a considerable amount of real estate in New Orleans, and perhaps in other cities and towns in the State of Louisiana, together with other property and effects, which your petitioners cannot specify nor particularize, because they have not sufficient knowledge concerning the same, but all of which is known to the said Life Association and its agents; all such property is subject to the aforesaid trust security, and is liable to the satisfaction of the claims arising under or by virtue of the policies issued as aforesaid to and on the lives of residents of Louisiana first and before all other claims or liabilities of said Life Association of America.

Fourth. Said property and assets, and the funds that may be realized therefrom, are entirely inadequate to pay the claims arising under and by virtue of the aforesaid policies, for whose payment said property and assets are specially charged.

Fifth. Petitioners show that a decree has been rendered against said Life Association of America by the circuit court of St. Louis, Missouri, on the 13th day of October, 1879, for the sum of one million one hundred thousand dollars ($1,100,000), in favor of L. E. Alexander, receiver of the Columbia Life Insurance Co. of Missouri; one Relfe, whose Christian name to your petitioners unknown, and who is the insurance superintendent or commissioner of the State of Missouri, filed allegations in said court, and therein charged, among other things, that the alleged surplus of said association had greatly decreased for several months past, that in the
9 last six months it had not taken any new risks, but had existed on premiums collected and the proceeds of the sale of its assets, and that for six months past the expenditures of the association *executed* its receipts in the sum of three hundred and thirteen thousand two hundred and ninety-four $\frac{93}{100}$ dollars; and that in the year 1878 its disbursements exceeded its income by the sum of six hundred and twenty thousand six hundred and three $\frac{73}{100}$ doll's ($620,603.73); and further, that said life association, on the 13th day of October, 1879, was utterly unable to pay its liabilities and remain solvent. Therefore he prayed a temporary injunction and the appointment of an agent to temporarily take charge of the property of the association and to receive its premiums and other property and income. Whereupon said court enjoined said Life Association of America from doing any further business, and appointed one D. M. Frost, of Saint Louis, Missouri, as a temporary agent to take charge of the said association affairs, said Frost qualified under a bond of twenty-five thousand dollars ($25,000).

10 Sixth. Petitioners state the allegations in paragraph five on information and belief, but charge that said allegations of said Relfe are true, and that said association is dissolved. They further show to your honor that for a long time past said association had disregarded its duties touching the aforesaid trust and trust property, and instead of keeping the same in Louisiana, as required by the contract for the purposes stated, it bas from time to time converted such investments into money and withdrawn the same from the State of Louisiana in breach of its duties. They further show that the jurisdiction of said circuit court of Missouri and the authority of its said temporary agent, as they are advised, does not extend to the State of Louisiana, and cannot be exercised over said property to the prejudice of the rights and interest of its citizens as hereinbefore shown. It would be a violation of the rights of the holders of the policies issued to residents of
11 Louisiana and contrary to the contract of said life association to allow this to be done, and for such assets of the association as aforesaid in Louisiana to go into the hands of said agent, Frost, and be

hereby or otherwise withdrawn from the jurisdiction of the courts of this State, and they show their assets will be so withdrawn if any agent of said Life Association of America is allowed to get possession or control of said Louisiana assets, and furthermore to allow such to be done would greatly embarrass, if not defeat the rights and claims of your petitioners and other Louisiana policy holders of said Life Association of America standing in a like position, and cause a fund exclusively applicable to the payment of their claims first and before others to be withdrawn from such trust imposed on it and devoted to the general liabilities of said Life Association of America to the contract of said association with the holders of policies issued to and on the lives of residents of Louisiana and to their rights under the law.

Seventh. Petitioners further show that the property in Louisi-
12 ana is by no means sufficient to pay the claims on it due under said trust to such Louisiana policy holders, and that the retention of the same and management of the same and the disposition of its proceeds through the courts of Louisiana is necessary to the protection of the rights of Louisiana citizens having the prior exclusive claim thereon.

Eighth. The aforesaid Life Association of America was and is a body corporate of the State of Missouri, and had and has its location and chief place of business at St. Louis, in the State of Missouri, but by its charter where the original policies were issued to your petitioners it was authorized to organize or recognize departments of said association in the several different States of the United States, and to enter into articles of agreement and contract with the departments so organized or with the policy takers in the several States and departments, or with a certain number as trustees for all inside State or department concerning the terms, conditions, and securities under and by which the poli-
13 cies in said several departments should be issued and to which they should be subject, and under this power they made a contract which in effect created a trust herebefore stated in favor of claims arising under and by virtue of policies issued to policy takers residents in Louisiana on their own lives or on the lives of such residents of said State. Such contract was in writing.

Your petitioners has applied to John R. Fell, the agent of said company at New Orleans, for a copy of it, they having a copy of the same, but he has not furnished it. Petitioners aver that it is not materially different from what is above stated.

Ninth. Policies were solicited by said association of residents in Louisiana on the faith of such an agreement and security, and would not have been taken without it. Such was the case of the other policies issued by said life association to residents in Louisiana. For a long time said Life Association of America recognized and acted on
14 said agreement and recognized such obligation and trust. No one has had any authority to annull or in any way modify the trust or obligation which accompanied the issuance of said policies and attached to said policies.

Tenth. Petitioners show that the department of Louisiana was recognized as a separate department of said Life Association of America, in execution of the agreement with said Life Association of America. The business of said Life Association of America was managed and conducted by a president and board of directors or trustees for said department; the investments were made which acquired the property in Louisiana here before referred to as subject to the trusts stated. For a long time the duty of continuing each investment for such security has not

been performed as your petitioners are informed and believe, no such board of directors or trustees has been continued, and for a long time past first Jno. B. Hood and afterwards John R. Fell has acted as
15 the only or chief agent of the association at New Orleans, and said John R. Fell as such agent is in possession, as petitioners are informed and believe, of the property, books, papers, and assets of said Life Association of America in Louisiana, and said Fell is in possession of or has control and knows where the contracts and agreements are on which the said rights of your petitioners and those similarly situated referred, and can discover and produce the same, and your petitioners cannot show the same to your honor for inspection without such a discovery. Petitioners will make all proper agents of the said Life Association of America parties, as soon as they can ascertain who they are and where they reside.

Eleventh. Your petitioners make the Life Association of America a body corporate under the laws of Missouri, D. M. Frost, temporary agent or receiver, residing in the State of Missouri at St. Louis, and an absentee from the State of Louisiana, whose Christian name is
16 unknown to your petitioners, and John R. Fell, who resides in the city of New Orleans and State of Louisiana, and L. E. Alexander, residing at St. Louis, in the State of Missouri, and an absentee from the State of Louisiana, parties defendant to this suit, and such other agents of said Life Association as they may be able to discover and serve process on.

Petitioners aver amicable demand, therefore petitioners pray that said Life Association of America, through its agent, John R. Fell, doing business in the State of Louisiana, with an office at New Orleans, and John R. Fell, individually, and D. M. Frost, temporary agent, a receiver of the Life Association of America, residing at St. Louis, in the State of Missouri, and L. E. Alexander, receiver of the Columbia Life Insurance Co. of Missouri, residing at St. Louis, in the State of Missouri, absentees from the State of Louisiana, through a curator ad hoc to be appointed by this honorable court, be cited to appear and answer
17 this petition; that this court will take jurisdiction of the aforesaid trust property of every kind and description, and of all property belonging to or standing in the name of said Life Association of America, situated in the State of Louisiana, and petitioners pray the appointment of a receiver to take possession of said property or subject to such trust, and cause the same to be administered and converted into money by such agent or receiver, and to be applied to the payment of the claims arising under or by virtue of the policies of said Life Association of America issued and held by residents of the State of Louisiana, or according to the agreements, conditions or trusts under which such policies were issued, or for that arising under or by virtue of any and all policies issued in the Louisiana department of said Life Association of America, according to their respective rights and equities, according to the net present value of the same respectively, that your honor will order a reference to ascertain what claims, liens, or privilege there are or that may have a beneficial interest in said fund
18 and will present net value of the same, and make such orders as may be necessary, requiring all claimants on such funds and effects to cover and propose and prove their claims by a time to be prescribed in such order. That your honor will, in short, cause such effects and funds to be held and administered to the equities with which they are charged, and petitioners pray that a receiver or agent be appointed by the court, the case being one of the gravest emergency and demand-

ing the immediate interference of this court for the prevention of irreparable injury to petitioners, and otherwise a like or similar interest to themselves, and furthermore that said John R. Fell, individually or as agent, and all other agents of said Life Association of America, may discover and set forth a true copy of the written contract or contracts and agreements with said Life Association of America *of America* respecting and for the benefit of its policy holders resident in the
19 State of Louisiana, or if they cannot produce the original to tell what became of the same, and in the event to produce copies of the same.

And for general relief.

(Signed) A. GOLDTHWAITE,
Att'y for Petitioners.

THE STATE OF LOUISIANA,
Parish of Orleans:

Personally appeared before me, the undersigned authority, Samuel E. Rundle, who being duly sworn, depose and says that the allegations contained in the foregoing petition were made as of his own knowledge are true in substance and in fact; all other allegations are made on his best information, remembrance, and belief, and believes them to be true.

(Signed) S. E. RUNDLE.

Sworn & subscribed before me this 5th day of Nov., 1879.

(Signed) P. T. ABADIE, *Dy Clk.*

Order.

20 Let Walter B. Wilcox, esq., be appointed receiver of the life association for the branch department of the State of Louisiana, and take charge and possession of the trust property of every kind and description standing in the name of said Life Association of America in the State of Louisiana, upon his given bond, conditioned as the law requires, and with good and sufficient security in the sum of twenty thousand dollars, until further orders of this court; and let Francis B. Lee, esq., be appointed curator ad hoc to represent D. M. Frost, temporary agent or receiver of said Life Association of America, residing at St. Louis, in the State of Missouri; and also L. E. Alexander, of the Columbia Life Insurance Company of Missouri, both absentees from the State of Louisiana, all as herein prayed for, and according to law.

Dated New Orleans, Nov. 5, 1879.

(Signed) W. H. ROGERS, *Judge.*

A true copy.

[SEAL.] (Signed) P. T. ABADIE, *Dy Clk.*

21 *Motion to reduce bond.—Filed Nov'r 7, 1879.*

SAM'L E. RUNDLE & HELEN RUNDLE
vs.
THE LIFE ASSOCIATION OF AMERICA ET ALS. } No. 10253.

And now comes the plaintiffs in the above entitled cause, by their attorney, and move the court to reduce the amount of the bond to be given by the receiver from the sum of twenty thousand dollars to the sum of ten thousand dollars, it appearing from the mover's petition filed

in this cause that the assets are mostly of securities upon real estate, and it is, when appearing that there is any cash in the bank deposits on property of a movable character, and upon appearers showing to the court that by the allegations contained in said petition that said property to be administered cannot be ascertained and estimated with anything like accuracy until an inventory has been taken, after which time said bond can be properly strengthened and increased, if the court
22 shall deem such action unnecessary in the premises, as upon proper application and showing by any parties in interest.

(Signed) A. GOLTHWAITE,
Att'y for Plaintiffs.

Motion to vacate.—Filed Nov'r 7th, 1879.

SAMUEL E. RUNDLE, &C., *vs.* THE LIFE ASSOCIATION OF AMERICA. } No. 10253.

On motion of R. L. Gibson, of counsel for the Life Association of America, and agents of D. M. Frost, special agent, &c., and John R. Fell, agent, it is ordered that plaintiffs show cause on Monday, November 10, 1879, at 11 a. m., why the order herein granted for the appointment of or appointing a receiver, &c., should not be vacated and set aside, and the order cancelled and annulled on the following grounds:

1. That the allegations of the petition in reference to a contract for investment of funds in Louisiana are not true, and that no
23 such contract as is alleged, nor any one similar to the one alleged, exists, or ever existed.

2d. That the affidavit on said petition is not true, nor sufficient in law to warrant the relief prayed for on the order granted.

3d. That the Life Association of America has an agency in this city of New Orleans, for several States, but the entire business is and always was under the control of the home office in St. Louis, Missouri, since the agency was established here, similar to that of all foreign companies, carrying on business here under the law of life insurance.

4. That the policy-holders of the Life Association of America, residing in this State, have no preference over other policy holders upon the assets of said company, which is the common property of creditors, and liable for its debts.

5. That the charter of the said company gives its existence, and is that under which all policy holders have contracted with the company, and by which their rights must be tested and determined together with the policies issued.

24 6. That the agency in this State has no separate or independent existence or authority whatever, is not the Life Association of America, and is not capable of standing in judgment.

7. That the Life Association of America has not been declared insolvent, nor has any final judgment been rendered against said company which is simply enjoined and restrained from doing and further business, pending certain litigation by virtue of an order issued by Judge A. M. Thayer, judge of the circuit court No. 5, in St. Louis, Missouri, that has jurisdiction over the said insurance co., which litigation may dissolve said corporation, and terminate its existence, according to the laws of said State of Missouri and which injunction has been strictly observed by the agency here under orders and informations from the

Life Association of America domiciled only in said city of St. Louis and State of Missouri.

8. That the policies issued to plaintiffs are such as gives them no present or defined interest and were not issued under any such contract as is alleged.

25 9. That no demand for payment of said policies has ever been made, nor is anything due upon them.

10. That no law of this State or of Missouri gives the policy holders residing here any special or other preference on property of a foreign life ins. co. like this one, having an agency here, over other policy-holders.

11. That the allegations of plaintiffs' petition do not show or allege any act of said association or its agents here that warrants the issuance of said order.

12. That the agency in this city has not increased the risks of the policy-holders residing in this State at any time, but has taken no new life risks for several years past.

13. That this court has no jurisdiction in the cause presented by plaintiffs' petition.

14. That no demand for contents, information, or data as alleged, was ever made on John R. Fell, agent of said company in this city, that he is aware of.

Sheriff's return.

26 Received Nov'r 7th, 1879, and on the same day, month, and year I served a copy of the within rule on S. E. Rundle, plaintiff herein, in person.

Returned same day.

(Signed) T. J. MARSHALL,
D'y Sh'ff.

Bond of Syndic.—Filed 8 Nov'r, 1879.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

Know all men by these presents that we, Walter B. Wilcox, as principal, Isidore Levi, as security up to twenty-five hundred dollars, Frank Sharp, as security up to five thousand dollars, Daniel S. Ramelli, as security up to twenty-five hundred dollars, of the State of Louisiana, are held and firmly bound unto W. H. Rogers, judge of the fifth district court for the parish of Orleans, or to his successors in office, in the sum of ten thousand dollars, current money of the United States of America, which we promise to pay to him or his successors in office, for the

27 faithful performance of which we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, renouncing all benefit or division or discussion whatever, sealed with our seals this 5th day of November, in the year of our Lord one thousand eight hundred and seventy-nine and the one hundred and fourth year of the Independence of the United States of America.

The condition of the above obligation is such that if the above bounden Walter B. Wilcox, receiver of the Life Association of America, does well and truly according to law administer the same, and further does

make, render a true, just, and perfect account of his actions and doings when thereunto lawfully required, either by the aforesaid judge or his successor in office agreably to law, then this obligation to be void, or else to remain in full force and virtue.

In witness whereof, we have hereunto set our hands and seals this day and year first above written.

(Signed) W. B. WILCOX.
28 (Signed) ISIDORE LEVI.
(do.) F. SHAP.
(do.) D. S. RAMELLI.

In the presence of—
(Signed) FRED. ADOLPH.
(do.) L. M. DUCROS.

Isidore Levi, being duly sworn, says that all his debts and liabilities being paid, he is well worth the sum of twenty-five hundred dollars, and that he resides in the parish of Orleans.

(Signed) ISIDORE LEVI.

Sworn to and subscribed before me this 7th day of November, A. D. 1879.

[SEAL.] (Signed) M. T. DUCROS,
Not. Pub.

Frank Sharp, being duly sworn, deposes and says that all his debts and liabilities being paid, he is well worth the sum of five thousand dollars, and that he resides in the parish of Orleans.

(Signed) F. SHARP.

Sworn to and subscribed before me this 7th day of November, A. D. 1879.

[SEAL.] (Signed) M. T. DUCROS.
Not. Pub.

29 Daniel S. Ramelli, being duly sworn, deposes and says that all his debts and liabilities being paid, he is well worth the sum of twenty-five hundred dollars, and that he resides in the parish of Orleans.

(Signed) D. S. RAMELLI.

Sworn to and subscribed before me this 7th day of November, A. D. 1879.

(Signed) M. T. DUCROS,
Not. Pub.

Order rule continued.—Extract from the minutes, Monday, November 10, 1879.

SAM'L E. RUNDLE & HELEN RUNDLE
vs.
THE LIFE ASSOCIATION OF AMERICA ET ALS. } No. 10253.

In the rule to vacate order herein taken on the 7th inst. came on this day for trial.

G. L. Hall, for plaintiffs in rule.

A. Goldthwaite, for defendant in rule.

When after hearing counsel, said rule was continued till Monday, the 17th instant, at 11 a. m.

30 *Rule for contempt.—Filed Nov. 11th, 1879.*

Fifth district court, parish of Orleans.

SAMUEL E. RUNDLE & HELEN RUNDLE
vs.
LIFE ASSOCIATION OF AMERCA. } No. 10253.

On motion of A. Goldthwaite, esq., att'y for receiver Walter B. Wilcox, it is ordered that one Jno. R. Fell do show cause on Wednesday, November 12, at 11 o'clock, why he should not be adjudged in contempt of the orders of this court, for failing and refusing to turn over to the receiver the property, effects, books, vouchers, letters, etc., belonging to the Life Association of America, and for having removed said property, effects, books, vouchers, letters, etc. from his possession since the appointment of the receiver by this court.

Sheriff's return.

Received November 12, 1879, and after due diligent search and inquiry, I was credibly informed that John R. Fell, herein named, is
31 at present absent from this city, and will not return until Sunday or Monday next.
Returned November 13, 1879.
(Signed) T. NAVEN,
Dy Sheriff.

Citation.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans, in the city of New Orleans.

SAMUEL E. RUNDLE & HELEN RUNDLE
vs.
LIFE ASSOCIATION OF AMERICA ET ALS. } No. 10253.

Mr. D. M. Frost, temporary agent or receiver of the Life Association of America, at St. Louis, State of Missouri, through Francis B. Lee, curator ad hoc, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fifth district court for the parish of Orleans, within ten days after the service hereof.
32 Witness the honorable Walter H. Rogers, judge of the said court, this 8th day of November, in the year of our Lord 1879.
(Signed) P. T. ABADIE,
Deputy Clerk.

Sheriff's return.

Received November 8th, 1879, and on November 10, 1879, I served a copy of within citation and accompanying petition on D. M. Frost, temporary agent or receiver of the Life Association of America herein, through F. B. Lee, curator ad hoc, in person.
Returned same day.
(Signed) H. FEEHAN,
Dy Sheriff.

Citation on L. E. Alexander.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans, in the city of New Orleans.

SAM'L C. RUNDLE & HELEN RUNDLE
vs.
LIFE ASSOCIATION OF AMERICA ET AL. } No. 10253.

33 Mr. L. E. Alexander, receiver of the Columbia Life Insurance Co. of Missouri, residing at St. Louis, through F. B. Lee, curator ad hoc, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable Walter H. Rogers, judge of the said court, this 8th day of November, in the year of our Lord 1879.

(Signed) P. T. ABADIE.
Deputy Clerk.

Sheriff's return.

Received November 8, 1879, and on Nov'r 10, 1879, I served a copy of within citation and accompanying petition on L. E. Alexander, herein named, receiver, &c., through F. B. Lee, curator ad hoc, in person.

Returned same day.

(Signed) H. FEEHAN.
D'y Sheriff.

34 *Order, rule continued.—Extract from the minutes, Wednesday, November 13th, 1879.*

SAMUEL E. RUNDLE & HELEN RUNDLE
vs.
LIFE ASSOCIATION OF AMERICA. } No. 10253.

The rule for contempt herein is continued till 17th inst., at 10 o'clock a. m.

Writ of injunction.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

THE STATE OF LOUISIANA:

SAMUEL E. RUNDLE ET ALS.
vs.
LIFE ASSOCIATION OF AMERICA. }

To Davidson B. Penn, recorder of conveyances, and John McEnery, recorder of mortgages, greeting:

You are hereby commanded, enjoined and restrained in the name of the State of Louisiana, and of the fifth district court for the par-

35 ish of Orleans, from receiving or recording any conveyance, grant, mortgage or other instrument in writing, purporting to be signed by said Life Association of America or any of its agents or attorneys, & from recording any such instrument of writing, and you are to remain so enjoined and restrained until further orders from this honorable court.

Witness the Honorable Walter H. Rogers, judge of our said court, this 15th day of November, in the year of our Lord one thousand eight hundred seventy-nine, and in the one hundred and fourth year of the Independence of the United States.

(Signed) P. T. ABADIE,
Deputy Clerk.

Sheriff's return.

Received November 8th, 1879, and on the same day, month, and year I served a copy of within writ of injunction on John McEnery, recorder of mortgages, through J. G. Richardson, deputy recorder, in person, and on D. B. Penn, register of conveyance, in person.

Returned same day.

(Signed) JNO. BAUMGARTNER,
D'y Sh'ff.

36 *Order, rule, &c.—Extract from the minutes, Monday, November 17th, 1879.*

SAMUEL E. RUNDLE & HELEN RUNDLE
vs.
LIFE ASSOCIATION OF AMERICA ET AL. } No. 10253.

On motion of G. L. Hall, of counsel for William S. Relf, superintendent of the insurance department of Missouri, and for suggestions on file, it is ordered that the decree of the circuit court of the city of St. Louis, State of Missouri, in the case of William S. Relf, as superintendent of the insurance department of the State of Missouri, plaintiffs, is the Life Association of America, and defendant be filed, and that he be made party to this suit.

Order, rule continued.—Extract from the minutes, Monday, November 17th, 1879.

SAMUEL E. RUNDLE & HELEN RUNDLE
versus
37 LIFE ASSOCIATION OF AMERICA. } No. 10253.

In the matter of the rule herein taken on the 7th instant to vacate order being called, G. L. Hall, for plaintiff, in rule, Alfred Goldthwaite, for defendant.

When, after hearing pleadings and counsel, said rule was ordered to be continued.

Order, rule submitted.—Extract from the minutes, Saturday, November 2d, 1879.

SAMUEL E. RUNDLE ET ALS.
vs.
LIFE ASSOCIATION OF AMERICA ET ALS. } 10253.

The rule herein taken on the 7th inst., came on this day for trial. All the parties herein represented.

When, after hearing argument of counsel, said rule being submitted the court took same under advisement.

Rule for attachment.—Extract from the minutes, November 15, 1879.

SAM'L E. RUNDLE ET AL.
vs.
LIFE ASSOCIATION OF AMERICA. } No. 10253.

38

Fifth district court for the parish of Orleans.

On motion of A. Goldthwaite, esq., attorney for receiver W. B. Wilcox, esq., in the above entitled cause, and it being represented to the court that the possession of the receiver is being obstructed and intermeddled with by one P. R. Fell, it is ordered that said P. R. Fell be attached and brought into court to show cause why he should not be adjudged in contempt of this order and jurisdiction of this court.

And it is further ordered that this rule be returned instanter.

Sheriff's return.

Received November 15, 1879, and on the same day, month, and year I served a copy of the within rule on P. R. Fell, herein named, and brought P. R. Fell into court.

39 Returned same day.

(Signed) W. E. FIELDER,
D'y Sh'ff.

Rule to make party, &c.—Extract from the minutes, 17th November, 1879.

Fifth district court for the parish of Orleans.

SAM'L E. RUNDLE & AL.
vs.
LIFE ASSOCIATION OF AMERICA. } 10253.

On motion of G. L. Hall, of counsel for William S. Relf, superintendent of the insurance department of Missouri, and upon suggesting to the court that the Life Association of America has had its charter forfeited, and that he is its legal representative of said late corporation, the Life Association of America, it is ordered that the decree of circuit court of the city of St. Louis, State of Missouri, in the case of William S. Relf, as superintendent of the insurance department of the State of Missouri, plaintiff, vs. The Life Association of America, defend-
40 ant, be filed and that he be made a party to this suit.

Sheriff's return.

Received November 18, 1879, and on the 21st November, 1879, I served a copy of the within rule personally on Alfred Goldthwaite, attorney for plaintiffs herein named.

Returned same day.

(Signed) H. FEEHAN,
D'y Sh'ff.

Petition to sue.

Fifth district court, parish of Orleans.

SAMUEL E. RUNDLE & HELEN RUNDLE
vs.
THE LIFE ASSOCIATION OF AMERICA ET ALS. } No. 10253.

The petition of Walter B. Wilcox, the receiver of this court in the above entitled cause, respectfully show that in the prayer of his receivership and to properly collect in the property and assets of the said Life Association of America in the State of Louisiana, it will be necessary to institute and prosecute writs in the courts for the recovery of
41 property and for the proper collection of the assets of the said association, and prays that general leave may be given to him in his said capacity of receiver to commence and institute and make himself a party to suits as plaintiff and defendant or in suits now pending, as he may think best for the estate of said association now being administered by this court.

(Sig.) A. GOLDTHWAITE,
Att'y for Receiver.

Filed Nov'r 24, 1879.
(Sig.) P. T. ABADIE,
D'y Clk.

Order.

Let the prayer of the within be granted.
New Orleans, 24 Nov., 1879.
(Sig.) W. H. ROGERS,
Judge.

Motion for injunction.

Fifth district court, parish of Orleans.

SAMUEL E. RUNDLE & HELEN RUNDLE
vs.
THE LIFE ASSOCIATION OF AMERICA ET ALS. } No. 10253.

42 And now the receiver, Walter B. Wilcox, in the above entitled cause, by his attorney, Alfred Goldthwaite, esq., comes and show this honorable court that an injunction be served by the court restraining and enjoining George Heck and George Heck & Co., Schropshire & Co., R. Seiger, Jno. C. Stickney and Philip Force, and each of them, servants, agents, and attorneys from paying, compromising, liquidating, or settling, in any way, any rent notes by them given to the Life Association of America, or its agent or agents for the lease of property heretofore leased to them or each of them, the said notes to mature or about the 1st of each month commencing with December, 1879.

(Signed) A. GOLDTHWAITE,
Att'y for Petitioner & Receiver.

Affidavit.

THE STATE OF LOUISIANA,
City of New Orleans:

Personally appeared before me the undersigned authority, Walter B. Wilcox, receiver of the property and effects of the Life Association

of America in Louisiana, who being duly sworn, deposes and
43 says that certain notes given him for rent of property leased from said Association of America will mature on or about Decr. 1st, and the first of each month thereafter for the unexpired terms of said leases, and that said notes have not been delivered to affiant and are beyond affiant's possession or control, and as affiant is believed were put beyond the jurisdiction of the court administering the property, to the city of St. Louis, and State of Missouri, and that an injunction and restraining order is necessary for the protection of the estate of which he is the receiver.

(Sig'd) W. B. WILCOX,
Receiver, &c.

Sworn to and subscribed before me this 29 day of November, 1879.
(Signed) P. T. ABADIE,
Dy Clk.

Let the writ of injunction issue as prayed for without bond, this receiver having qualified with bond.
Nov. 29, 1879.
(Signed) W. H. ROGERS,
Judge.

44 Filed Nov'r 29, 1879.
JNO. J. HANNAN,
Dy Clk.

Writ No. 10253.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

The State of Louisiana to George Heck & Co., George Heck, R. Seiger, Philip Fouke, John Stickney, and Schropshire & Co., of the city of New Orleans, and State of Louisiana, their agents, servants, and attornies, greeting:

You are hereby commanded, enjoined, and restrained in the name of the State of Louisiana, and of the fifth district court for the parish of Orleans, from paying, compromising, liquidating, or settling in any way, any rent notes by you given to the Life Association of America, or its agent or agents, for the lease of property heretofore leased to you, the said notes to mature on or about the first day of each month com-
45 mencing with December, 1879, and you are so to remain enjoined and restrained until the further order of this honorable court.

Witness the honorable Walter H. Rogers, judge of our said court, this 29th day of November, in the year of our Lord one thousand eight hundred and seventy-nine, and in the 104th year of the Independence of the United States.
(Signed) JOHN J. HANNAN,
Dy Clk.

Sheriff's return.

And on the 29th of Nov'r, 1879, I served a copy of within writ of injunction on John C. Stickney in person.
Returned same day.
(Signed) J. M. LAKY,
Dy Sheriff.

And on the 29 day of Nov'r, 1879, served a copy of within writ of injunction personally on Geo. Heck herein, and served a copy on Geo. Heck & Co., Geo. Heck in person, a member of said firm, and served a copy personally on R. Seiger herein, and served a copy on Schropshire & Co. herein, through H. E. Scropshire in person, a member of said firm, and served a copy on Philip Fouke, herein named, by leaving the same at his domicil 368 Canal st. in the hands of Mrs. B. Fouke, a person apparently over the age of 14 years, living and residing in said domicil, whose name, and other facts connected with this service, I learned by interrogating said Mrs. A. B. Fouke, said Philip Fouke being absent from his domicil at time of said service.

46

Ret'd same day.

(Signed) . . JAS. P. GLYN,
Deputy Sheriff.

Petition for removal.—Filed November 28, 1879.

In the fifth district court for the parish of Orleans, State of Louisiana.

SAM'L E. RUNDLE ET AL.
vs.
LIFE ASSOCIATION OF AMERICA. } No. 10253.

To the honorable the fifth district court for the parish of Orleans, State of Louisiana:

47 Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars; that the controversy in said suit is between citizens of different States, and that the petitioners, at the time of the commencement of this suit, were and still are citizens of the State of Missouri, and that Samuel E. Rundle and Helen Rundle, his wife, were then and still are citizens of the State of Louisiana; and your petitioners, William S. Relfe, states that he is the superintendent of the insurance department of the State of Missouri, and, as such, is in charge of the affairs and assets of the defendant Life Association of America; that said company is an insurance company, organized under the laws of the State of Missouri; that it is, and for a long time has been, dissolved, and that he is the legal representative of said company, and is a citizen of the State of Missouri.

48 And your petitioner offers herewith a good and sufficient surety for their entering in said circuit court of the United States on the first day of its next session a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto. And they pray this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the district of Louisiana. And they will ever pray.

(Signed) R. L. GIBSON,
" G. L. HALL,
Atty's of Pet'r.

STATE OF LOUISIANA,
Parish of Orleans, ss:

I, Gilbert L. Hall, being duly sworn, do say that I am one of the attorneys for the petitioner in the above entitled cause; that I have

49 read the foregoing petition, and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

Subscribed by the said Gilbert L. Hall, in my presence, by and by him sworn to before me this 28th day of November, A. D. 1879.

(Signed) G. L. HALL.

(Signed) P. T. ABADIE,
Dy Clk 5th Dist. Court.

Bond for removal of cause.—Filed Nov'r 28, 1879.

Know all men by these presents that we, William S. Relfe, superintendent of insurance department of the State of Missouri, and legal representative of the Life Association of America, as principal, and Gideon Townsend, as surety, are held and firmly bound unto Samuel E. Rundle and Helen Rundle, his wife, in the penal sum of five hundred (500) dollars, for the payment whereof well and truly to be made unto the said Samuel E. Rundle and Helen Rundle, his wife, their heirs, representatives, and assigns, we bind ourselves, our heirs, represent-
50 atives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: the said William S. Relfe, superintendent of insurance department of State of Missouri, and legal representative of the Life Association of America, having petitioned the fifth district court for the parish of Orleans, State of Louisiana, for the removal of a certain cause therein pending, wherein Samuel E. Rundle and Helen Rundle, his wife, plaintiff, and the Life Association of America, No. 10253 of its docket, defendant, to the circuit court of the United States in and for the district of Louisiana:

Now, if the said William S. Relf, superintendent of insurance department of Missouri, legal representative of the late Life Association of America, your petitioner, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be
51 awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this 25th day of November, A. D. 1879.

(Signed) W. S. RELF, [SEAL.]
As Supt. Ins. Dep't.

[SEAL.] MO. LIFE ASS'N OF AMERCIA,
By W. S. RELFE,
Supt. in Charge.

(Signed) GIDEON TOWNSEND. [SEAL.]

STATE OF LOUISIANA,
Parish of Orleans, ss:

I, Gideon Townsend, of said county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Louisiana, that I am worth the sum of five hundred dollars over and above all debts and liabilities, and exclusive of property by law exempt from execution, that I have property in the State of Louisiana liable to execution of the value of more than five hundred dollars.

(Signed) GIDEON TOWNSEND.

52 Sworn to and subscribed in my presence by Gideon Townsend and by him sworn to before me this 28th day of Nov., 1879.
(Signed) N. B. TRIST,
Not. Pub.

Document annexed to policy No. 46164.—*Filed November* 5, 1879.

Provisions for payment of half yearly installments of premium, accompanying policy No. 46164 (hereinafter called "this policy") on the life of Helen Rundle.

The Life Association of America hereby consents on the following conditions and not otherwise to the payment of half yearly installments of premium on this policy, in lieu of the yearly premiums stated in section one of this policy.

The amount of each installment of premium shall be twenty-seven and $\frac{39}{100}$ dollars, and on such installment shall be due and payable to the association at or before twelve o'clock noon, on the first day of October and April, in each and every policy year of this policy, until in all
53 ninety-two installments shall have been paid; beginning on the first day of October, in the year of our Lord one thousand eight hundred and seventy-seven.

After years the amount of each installment shall be dollars, due and payable at the times above stated until in all such installments shall have been paid.

The association shall have the right to deduct from any sum payable by the death of the insured any then remaining installments of premiums for the policy year in which the death occurs, and neither such right of deduction nor anything else herein contained shall be construed to effect the condition respecting installments of premiums contained in section one of this policy, in lieu of the installments above stated for such policy year or years.

For consideration received this association will insure the life of Helen Rundle under policy No. 46164, subject to the conditions of said
54 policy from the date hereof until 12 o'clock noon, on the first day of October, 1877, at which time the first installment of premium on said policy shall be due and payable.

The Life Association of America hereby executes the foregoing as a part of the above designated policy.

H. Q.
(Signed) H. W. HOUGH,
President.

J. S. PIERCE,
Secretary.

Exhibit A.—*Filed November* 5, 1879.

LIFE ASSOCIATION OF AMERICA.

Policy No. 46164.

Sixty days after proof of the death of Helen Rundle, of New Orleans, parish of Orleans, La., hereinafter called the insured, The Life Association of America (hereinafter called the association) will pay the sum of twenty-five hundred dollars to her husband, Samuel E. Rundle
55 (herein called the assured), if living, or if not living to or to the legal holder of this policy. But if the insured be living on

the first day of October, in the year 1923, this policy shall then mature and the above stated sum shall then be paid to the aforesaid Samuel E. Rundle, or to the legal holder of this policy.

The above and all other liabilities of the association on account of this policy are and shall be subject to the conditions contained or referred to in the following sections, each and all of which conditions are and shall be of the essence of the contract under this policy.

SECTION ONE. The sum of twenty-three dollars and seventy cents yearly premium on this policy shall be due and payable to the association on or before the 1st day of October, at 12 o'clock noon, in each and every year, until forty six such premiums shall have been paid,
56 beginning on the first day of the month aforesaid, in the year one thousand eight hundred and seventy-seven.

SECTION TWO. This policy shall take effect when, and not before, the advance payment hereon shall be actually made during the lifetime of the insured. If any premium or instalments thereof on this policy be not paid when due and payable, or if the principal or the interest of any indebtedness to the on account of this policy be not paid when due and payable, then the consideration of this contract shall be deemed to have failed, and the association shall be without liability on account of this policy other than may be conditioned in the "Provisions for extended insurance" accompanying this policy.

SECTION THREE. If the insured shall, without the consent of the association, previously given in writing, personally engage in any of the occupations or employments specified on the back of this policy, or if he shall without such consent travel or reside within the tropics,
57 then, in any and every such case, the association shall be without liability on account of this policy.

SECTION FOUR. The death of the insured brought about by his violation of law, or by his use of alcoholic stimulants, and the death of the insured by self-destruction, or risks which the association does not assume in this contract—

In case of any such death of the insured the association shall be without liability on account of this policy, except that on proof of such death and the surrender and discharge of this policy within one year after such death, and not otherwise, the association will pay a sum equal to the net value of this policy at the beginning of the policy year in which the death occurs, computed by the American experience table of mortality, and four and one half per centum yearly interest.

SECTION FIVE. None of the conditions of this policy shall be affected by or in consequence of the insanity at any time of the insured.
58 The association shall not be bound by any word or act or custom or publication of any person or corporation, except as conditioned in this policy.

SECTION SIX. It is the consideration precedent of this contract that the contents of the application for this policy be true; and if they be in any respect untrue this contract shall be deemed to have been without consideration, and the association shall be without liability on account of it.

SECTION SEVEN. This policy and the conditions printed by the association on the back of this policy, and all papers executed by the association as a part of this policy taken together, contain and shall constitute the entire contract between the association and every person now or hereafter in this policy; said contract shall *in be* no respect varied except by the association's acts in writing specially designating this policy as the policy to which such writing refers, and such writing
59 shall be executed only by the president or vice-president and the secretary or assistant secretary of the association.

The Life Association of America hereby executes this policy under its corporate seal, at its general office, in Saint Louis, Missouri, the 21st day of August, 1877.

[SEAL.] (Signed) H. N. HOUGH,
President.

J. S. PIERCE,
Secretary.

(Endorsed on back of policy:)

Section three of this policy refers to the following: The insured shall not, without the association's consent, previously given in writing, be personally engaged in blasting, mining, or submarine operations, nor in the manufacture or transportation of highly inflam'able or explosive substance, nor be employed on any railroad train or steam vessel, nor be employed as a sailor, nor enter into any military or naval service
60 whatsoever, (the militia when not in actual service only excepted.)

All payments to or by the association shall be due and payable at the general office of the association in St. Louis, Missouri, and the only evidence of any payment to the association shall be its receipt, signed by the president or vice-president, and the secretary or assistant secretary.

In the discharge of any and every liability under this policy, the association shall have the right to offset the principal and interest of any indebtedness to it on account of this policy, whether such indebtedness shall or shall not have become due and payable, and neither the possession, nor the exercise, nor the non-exercise of such rights or offset, nor the receipt of any sum of money under any mistake of law or fact, shall be construed as a waiver of any of the considerations or conditions to which this policy is or may be subject, nor shall be construed as a relinquishment of any other right or cause of action that the asso-
61 ciation may have on account of this policy or otherwise.

No assignment of this policy shall be made except in writing, and immediately after its execution a copy thereof certified by the parties thereto shall be delivered to the association at its general office in Saint Louis, Missouri, and every claim arising under this policy made by an assignee, shall be subject to proof, to title, and interest.

Provisions for extended insurance accompanying policy No. 46164, hereinafter called "this policy" on the life of Helen Rundle.

PROVISION ONE. If default be made in the payment of a premium, or installment of premium, or any other sum payable on account of this policy, then, notwithstanding such default, an insurance shall be continued in force under this policy in a sum and for a period which shall be determined in the following manner:

62 First. The amount of insurance extended shall be the sum insu'ed in this policy.

Second. The period of extension (that is, the term during an insurance shall be extended from and after the time of default) shall be equal to one half of the number of complete policy year during which premiums shall have been fully paid in cash prior to default as aforesaid, reckoning from the first day of October, in the year 1870.

PROVISION TWO. But if any premium, prior to default as aforesaid, shall have been paid otherwise than in cash, or if there be any indebtedness on account of this policy, then the conditions of extended insurance shall be only as follow:

The net value (computed by the combined experienced table of mor-

tality with four per centum yearly interest) shall be taken for the amount and term for extended insurance above provided, and from such net value shall be deducted all premiums paid otherwise than in
63 cash, and all indebtedness on account of this policy, and any balance of such net value remaining after the aforesaid deduction of premiums and other indebtedness, shall be applied as a net single premium for extended insurance (by the rates of mortality and interest above mentioned) for such period as such balance or net value will pay for (any fractional part of a calender month to be excluded from such period), and the amount of extended insurance during such period shall as above said be the sum insured in this policy.

PROVISION THREE. If the insured should die within a period of extension, and if none of the conditions of this policy (except as to payment of premiums) shall have been violated, the association will, subject to the conditions contained in section four, and all other conditions of this policy, and the special condition hereinafter set forth, pay the sum insured in this policy, after deducting all overdue and unpaid premiums on this policy, with seven per centum yearly interest in
64 advance, compounded on said premiums. Such payments to be made sixty days after proof of death of the insured.

PROVISION FOUR. If a period of extended insurance, computed as aforesaid, should exceed the term of maturity of this policy as an endowment (that is, if such period should extend beyond the day on which the sum insured in this policy as is by its terms to be payable if the insured be then living), then in such case the extended insurance shall expire on said day, and the sum insured become payable after deducting from said sum all overdue and unpaid premiums and interest above specified.

PROVISION FIVE. In any and every case of extended insurance under this policy this shall become and continue to be a non-participating policy.

65 SPECIAL CONDITION. No action against the association for the recovery of any sum by reason of the death of the insured during any period of extended insurance shall be sustainable in court, unless such action be brought within the term of one year next after the death of the insured, and if any such action be brought against the association after the expiration of said term of one year, the lapse of time shall be deemed conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding.

The Life Association of America hereby executes the foregoing as part of the above designated policy.

(Signed) H. W. HOUGH,
President.

J. S. PIERCE,
Secretary.

Exhibit B.—Filed Nov. 5th, 1879.

THE LIFE ASSOCIATION OF AMERICA.

Policy No. 47499.

66 Sixty days after proof of the death of Samuel E. Rundle, of New Orleans, Orleans Parish, Louisiana (hereinafter called the insured,) the Life Association of America (hereinafter called the Association,) will pay the sum of four hundred and fifty dollars to his wife, Helen Rundle, if living, or if not living, to , or to the legal holder of this policy. But if the insured be living on the first day of

November, in the year 1918, this policy shall then mature and the above stated sum shall then be paid to himself, or to the legal holder of this policy:

The above, and all other obligations of the association on account of this policy, are declared by the association and agreed by the assured, and by every person now or hereafter interested in this policy, to be subject to the following conditions, each and all of which are hereby expressly declared and agreed to be the essence of the contract under this policy:

SECTION ONE. The premium consideration of this contract has
67 been paid to the association on or before the execution of this policy.

SECTION TWO. If the insured shall, without the consent of the association previously given in writing, personally engage in any of the occupations or employments specified on the back of this policy, or if he shall without such consent pass or remain beyond the limits of travel and residence specified on the back of this policy (and hereby further specified by naming the twenty-fifth parallel of north latitude, and excluding), then, in any and every such case, the association shall be without liability on account of this policy.

SECTION THREE. The death of the insured brought about by his violation of law, or by his use of alcoholic stimulants, and the death of the insured by self-destruction, are risks which the association does not assume in this contract.

In case of any such death of the insured, the association shall be released from all liability for the payment of any sum whatso-
68 ever, except that, on proof of such death, and the surrender and discharge of this policy within one year after such death, and not otherwise, the association will pay a sum equal to the net value of this policy at the beginning of the policy year in which the death occurs, computed by the American experience table of mortality, and 4½ per centum yearly interest.

SECTION FOUR. None of the conditions of this policy shall be affected by or in consequence of the insanity, or at any time of the insured.

The association shall not be bound by any word, or act, or custom, or publication of any person or corporation, except as conditioned in this policy, in case the obligations of the association under this contract be terminated by the want or by the failure of any considerations, or by the violation of any of the conditions recited or referred to in this policy, or if such obligations mature, or in any manner expire or
69 cease, then in any and every such case the association shall be released from all liability for the payment of any sum whatsoever, except as conditioned in this policy.

SECTION FIVE. The contents of the application for this policy are agreed to be material, are warranted to be true, and the truth thereof is the consideration precedent of this contract; and if they be in any respect untrue, this contract shall be deemed to have been without consideration, and the association shall be without liability on account of it.

SECTION SIX. This policy and the application for this policy, and the conditions printed by the association on the back of this policy, and all papers executed by the association as a part of this policy, taken together, contain and shall constitute the whole and exclusive contract between the association and every person now or hereafter interested in this policy. Said contract shall be in no respect varied except by the association's act in writing, specifically designating this policy as

70 the policy to which such writing refers; and such writing shall be executed only by the president or vice-president, and the secretary or assistant secretary of the association.

The Life Association of America hereby executes this policy under its corporate seal, at its general office in Saint Louis, Missouri, the first day of November, 1877.

[SEAL.] (Signed) H. W. HOUGH,
President.

J. S. PIERCE, *Secretary.*

(Endorsed on back of policy:)

Section two of this policy refers to the following:

The insured may reside in any part of the world not lying between the Tropic of Capricorn and the parallel of north latitude named in section two of this policy (except the States or parts of States named as excluded in section two of this policy); he may (except from the first day of July to the first day of December) reside, for a period not
71 longer than ninety days in any one calender year, in any part of the world above named as excluded; and he may also travel as a passenger to and from any part or place within the foregoing limits; but he shall not, without the association's consent previously given in writing, pass or remain beyond the foregoing limits; nor without such consent shall he be personally engaged in blasting, mining, or submarine operations, nor in the manufacture or transportation of highly inflam-'able or explosive substances; nor be employed on any railroad train or steam vessel, no' be employed as a sailor, nor enter into any military or naval service whatsoever (the militia when not in actual service only excepted).

All payments to or by the association shall be due and payable at the general office of the association, in Saint Louis, Missouri, and the only evidence of any payment to the association shall be its receipt,
72 signed by the president or vice-president, and the secretary or assistant secretary.

In the discharge of any and every liability under this policy, the association shall have the right to offset the principal and interest of any indebtedness to it on account of this policy, whether such indebtedness shall or shall not have become due and payable; and neither the possession, nor the exercise, nor the non-exercise of such right of offset, nor the receipt of any sum of money under any mistake of law or fact, shall be construed as a waiver of any of the considerations or conditions to which this policy is or may be subject, nor shall be construed as a relinquishment of any other right or cause of action that the association may have on account of this policy or otherwise.

No assignment of this policy shall be made except in writing, and immediately after its execution a copy thereof, certified by *by* the parties
73 thereto, shall be delivered to the association at its general office in Saint Louis, Missouri, and every claim arising under this policy made by any assignee shall be subject to proof of title and interest.

Exhibit C.—Filed November 5th, 1879.

LIFE ASSOCIATION OF AMERICA.

Policy No. 49170.

Sixty days after the proof of the death of Samuel E. Rundle, of New Orleans, parish of Orleans, Louisiana (hereinafter called the insured),

the Life Association of America (hereinafter called the association), will pay the sum of six hundred dollars to his wife, Helen Rundle, if living, or if not living, then to , or to the legal holder of this policy. But if the insured be living in the first day of May, in the year 1918, this policy shall then mature, and the above stated sum shall be paid to himself or to the legal holder of this policy.

The above and all other obligations of the association on account
74 of this policy are declared by the association, and agreed by the assured, and by every person now and hereafter interested in this policy, to be subject to the following conditions, each and all of which are hereby expressly declared to be of the essence of the contract under this policy:

SECTION ONE. The premium consideration of this contract has been paid to the association on or before the execution of this policy.

SECTION TWO. If the insured shall, without the consent of the association previously given in writing, personally engage in any of the occupations or employments specified on the back of this policy, or if he shall, without such consent, pass or remain beyond the limits of travel and residence specified on the back of this policy (and hereby further specified by naming the twenty-fifth parallel of north latitude and excluding), then in any and every such case the association
75 shall be without liability on account of this policy.

SECTION THREE. The death of the insured, brought about by his violation of law or by his use of alcoholic stimulants, and the death of the insured by self destruction, are risks which the association does not assume in this contract.

In case of any such death of the insured the association shall be released from all liability for the payment of any sum whatsoever, except that on proof of such death and the surrender and discharge of this policy within one year after such death and not otherwise, the association will pay a sum equal to the net value of this policy at the beginning of the policy year in which the death occurs, computed by the American experience table of mortality, and four and one half per centum yearly interest.

SECTION FOUR. None of the conditions of this policy shall be
76 affected or in consequence of the insanity at any time of the insured.

The association shall not be bound by any word or act or custom or publication of any person or corporation, except as conditioned in this policy. In case the obligations of the association under this contract be terminated by the want or by the failure of any of the considerations or by the violation of any of the conditions recited or referred to in this policy, or if such obligations mature or in any manner expire or cease, then in any and every such case the association shall be released from all liability for the payment of any sum whatsoever, except as conditioned in this policy.

SECTION FIVE. The contents of the application for this policy are agreed to be material, are warranted to be true, and the truth thereof is the consideration precedent of this contract, and if they be in any respect untrue this contract shall be deemed to have been with-
77 out liability on account of it.

SECTION SIX. This policy and the application for this policy and the conditions printed by the association on the back of this policy, and all papers executed by this association as a part of this policy, taken together, contain and shall constitute the whole and exclusive contract between the association and every person now or hereafter interested

in this policy; said contract shall be in no respect varied except by the association's act in writing specially designating this policy *said contract shall be in no respect varied except by the association's act in writing specially designating this policy* as the policy to which such writing refers, and such writing shall be executed only by the president or vice-president and the secretary or assistant secretary of the association.

The Life Association of America hereby executes this policy under its corporate seal at its general office in Saint Louis, Missouri, the
78 1st day of May, 1878.

(Signed) H. W. HOUGH,
President.

J. S. PIERCE,
Secretary.

Endorsed on back of policy (same as transcribed on page 70 of this transcript).

Clerk's certificate.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

I, Paul T. Abadie, deputy clerk of the fifth district court for the parish of Orleans and as such duly sworn, do hereby certify the foregoing pages do contain a true and complete transcript of all the proceedings had, documents filed (except the motion or petition for writs of injunction, dated the 15th day of November, 1879, which is mislaid, and after due and diligent search and inquiry said motion or petition could
79 not be found) in the suit wherein Samuel E. Rundle and Helen Rundle are plaintiffs, and the Life Association of America is defendant, and numbered 10253 of our said court.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at the city of New Orleans, this 6th day of December, A. D. 1879, and of the Independence of the United States of America the 104th.

[SEAL.] (Signed) PAUL T. ABADIE,
D'y Clk 5th Dist. Court.

80 Proceedings in circuit court of the United States, fifth circuit and district of Louisiana.

Motion to dismiss.—Filed Dec'r 9th, 1879.

SAMUEL E. RUNDLE & HELEN RUNDLE
vs.
THE LIFE ASSOCIATION OF AMERICA. } No. 8932.

And now comes Walter B. Wilcox, receiver of the property and effects of the Life Association of America, in the State of Louisiana, by virtue of an appointment from Hon. Walter H. Rogers, the judge of the fifth district court for the parish of Orleans, and State of Louisiana, in a suit pending therein No. 10253 on the docket of said court, wherein Samuel E. Rundle and Helen Rundle are plaintiffs and The Life Association of America and others are defendants, by his attorney, and moves the court to dismiss the said cause from this court and
81 strike it from the docket thereof for the following grounds:

1st. That this court is without jurisdiction either of the person or the subject-matter.

2d. That said William S. Relfe, superintendent of insurance for the State of Missouri, has no standing in this, being a creature of the State of Missouri, and without capacity to sue in this hon. court or to remove causes hereto under the acts of Congress.

3d. That this cause was improperly removed from the 5th district court for the parish of Orleans.

4. That said 5th court having taken jurisdiction and appointed a receiver to take charge of the property, this court cannot interfere with the possession of the receiver of said 5th district court.

And petitioner prays judgment upon this his motion.

(Signed) A. GOLDTHWAITE,
Att'y for Receiver.

Let this application be heard contradictorily on the 13th inst. at 11 a. m., and let the party in interest be notified.

Dec'r 9th, 1879.

(Signed) EDWARD C. BILLINGS, *Judge.*

82 *Marshal's return.*

Received Dec'r 10th, 1879, by the U. S. marshal, and on December 11th, 1879, I served a copy of the within motion on G. L. Hall, esq., by leaving the same at his office in the hands of J. D. Kiernan, his clerk.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Order rule submitted, &c.—Extract from minutes.

NEW ORLEANS, *Saturday, December* 20, 1879.

Court met pursuant to adjournment.

Present, Hon. E. C. Billings, district judge.

SAMUEL E. RUNDLE ET AL.
vs.
LIFE ASSOCIATION OF AMERICA ET ALS. } No. 89.

The rule to dismiss was this day submitted on briefs to be furnished within 10 days, and counsel for the parties respectively consenting, it is ordered that until this court pass upon the motion to remand, the receiver herein appointed by the 5th district court for the parish of
83 Orleans is authorized to collect the rents as they shall fall due.

Motion and order to pay receiver rents, &c.—Extract from the minutes of December 22d, 1880.

SAM'L E. RUNDLE ET AL.
vs.
LIFE ASSOCIATION OF AMERICA ET ALS. } No. 8932.

On motion of A. Goldthwaite, esq., counsel for the receiver. Walter B. Wilcox, it is ordered that Geo. Heck, Geo. Heck & Co., R. S. Leiger, Schropshire & Co., D. L. C. Stickney, Chas. E. Stevens, and Philip Forke pay the receiver, Walter B. Wilcox, the rent due by them, respectively, on the 1st day of December and on the 1st day of each month thereafter during the term of his or their leases, respectively, or until the further order of this court. It appearing to the court that said

leases have been made with the Life Association of America, heretofore a corporation chartered under the laws of Missouri, and it fur-
84 ther appearing that by consent of counsel an order was entered in this court, on Dec'r 19, that said receiver be authorized to collect the rents, and it further appearing to the court that a like order has been made by the 5th district court for the Parish of Orleans, in which court said receiver received his appointment, and it further appearing that this order is made pending the consideration of the motion to dismiss and remand this case to the 5th district court for the Parish of Orleans.

Supplemental transcript of record.—Filed January 2d, 1880.

STATE OF LOUISIANA.

Fifth district court for the Parish of Orleans.

SAMUEL E. RUNDLE ET AL.
vs.
THE LIFE ASSOCIATON OF AMERICA ET ALS. } No. 10253.

Motion for attachment.—Filed December 3d, 1879.

SAMUEL E. RUNDLE AND HELEN RUNDLE
versus
85 THE LIFE ASSOCIATION OF AMERICA.

On motion of A. Goldthwaite, esq., attorney for receiver, W. B. Wilcox, it is ordered that an attachment issue for the body and person of one Jno. R. Fell, and that said attachment be returnable by the sheriff instanter or when found.

Motion for attachment.—Filed Dec'r 4, 1879.

SAMUEL E. RUNDLE AND HELEN RUNDLE
vs.
THE LIFE ASSOCIATON OF AMERICA ET ALS. } No. 10253.

On motion of A. Goldthwaite, esq., attorney for receiver, W. B. Wilcox, it is ordered that one Wm. P. Freret be attached and brought before this court for a contempt of its process and interfering with its possession of property, and it is ordered that this attachment be made reurnable instanter.

86 *Order, rule dismissed.—Extract from minutes.—Saturday, Dec. 20, 1879.*

SAMUEL E. RUNDLE AND HELEN RUNDLE
vs.
THE LIFE ASSOCIATION OF AMERICA ET ALS. } No. 10253.

In the matter of the rule to set aside the order appointing a receiver, &c., herein taken on the 7th of November, 1879, for the reason orally assigned (the court reserving the right to file within reasons if necessary), it is ordered that said rule be dismissed.

Motion to collect rents.—Filed Dec'r 22d, 1879.

SAM'L E. RUNDLE ET AL.
vs.
LIFE ASSOCIATION OF AMERICA.

On motion of A. Goldthwaite, esq., attorney for Walter B. Wilcox, esq., receiver in the above-entitled cause, it is ordered that the
87 restraining orders heretofore issued and directed to Geo. Heck, Geo. Heck & Co, R. S. Seiger, Shropshire & Co., Dr. S. C. Stickney, and Philip Fouke be modified so as to permit them to pay the rent due December 1st, 1879, and the rent to become due on the 1st of each month thereafter until the expiration of their respective leases to the receiver, Walter B. Wilcox.

And it is further ordered that the said Geo. Heck, Geo. Heck & Co., R. S. Seiger, Shropshire & Co., and Philip Fouke be ordered and directed to pay to said Walter B. Wilcox, receiver as aforesaid, the rents due by them respectively on the 1st day of December, 1879, and on the first day of each month thereafter during the term of their said leases with the Life Association of America.

Sheriff's return.

Received December 22, 1879. And on the 24th day of December, 1879, I served a copy of the within rule personally on George Heck, defendant herein named, and on George Heck & Co. herein named, through George Heck in person, a member of the said firm,
88 and on Shropshire & Co. herein named, through E. Shropshire in person, a member of the said firm.

Returned same day.

(Signed) T. J. NAVEN,
D'y Sheriff.

And on the 26th day of December, 1879, I served a copy of the within rule on R. S. Seiger, herein named, by leaving the same at his domicil, No. 269, Gravier st., in the hands of Mrs. R. S. Seiger, a person apparently over the age of fourteen years, living and residing in said domicil, whose name and other facts connected with this service I learned by interrogating said Mrs. R. S. Seiger; being absent from his domicil at the time of said service.

Returned same day.

(Signed) T. J. NAVEN,
D'y Sheriff.

And on the 29th day of December, 1879, I served a copy of the within rule personally on Philip Fouke herein named.

Returned same day.

(Signed) T. J. NAVEN,
D'y Sheriff.

89 *Order fixing rule.—Extract from minutes, Saturday, Dec'r 27, 1879.*

SAMUEL E. RUNDLE & AL.
vs.
THE LIFE ASSOCIATION OF AMERICA ET ALS. } No. 10253.

On motion of Alf. Goldthwaite, of counsel for plaintiffs, it is ordered by the court that the rule for contempt herein be fixed for trial on

Monday, January 5th, 1880, at eleven o'clock a. m., and that J. R. Beckwith and J. R. Fell be notified hereof.

Notice of trial of rule.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

NEW ORLEANS, *December* 27, 1879.

SAMUEL E. RUNDLE ET AL.
vs.
THE LIFE ASSOCIATION OF AMERICA ET ALS. } No. 10253.

To Mess. J. R. Beckwith and J. R. Fell:

90 Please take notice that the rule for contempt in the above entitled case is fixed for trial on Monday, the 5th day of January, 1880, at 11 o'clock a. m.

(Signed) PAUL T. ABADIE,
D'y cl'k.

Sheriff's return.

Received Dec'r 27, 1879, and on the 30th day of December, 1879, I served a copy of within notice personally on J. R. Beckwith, attorney herein named.

Returned same day.

(Signed) H. FEEHAN,
D'y Sheriff.

Petition for removal.—Filed Dec'r 30, 1879.

SAMUEL E. RUNDLE & AL.
vs.
THE LIFE ASSOCIATION OF AMERICA. } No. 10253.

In the fifth district for the parish of Orleans.

To the honorable Walter H. Rogers, judge of the said fifth district court for the parish of Orleans:

The petition of the above-named defendants, the Life Associa-
91 tion of America, a corporation created by and under the authority of the laws of the State of Missouri, and as a corporation, a citizen of said last named State, and D. M. Frost, a citizen and resident of the State of Missouri, made defendants herein, respectfully represent unto this honorable court that the defendant, William S. Relfe, heretofore made and filed in this cause in this court his petition and bond in due form for the removal of this cause from this court to the circuit court of the United States for the district of Louisiana, at its next term and session, as authorized and permitted by the act of Congress in such case made and provided. Your petitioner in all things assent thereto and claim the benefit thereof.

And they further say in their own behalf and for themselves that at the time of the commencement of this action they respectively were

citizens of and domiciled in the State of Missouri, and that their citizenship and domicil has in no manner changed since that time; that the said defendant, The Life Association of America, has been
92 made the subject of an order of the courts of the State of Missouri, which is of record by copy in this court in this cause, but in all other respects has the same corporate charter as it possessed at the date of the institution of this suit; that the matter in dispute in this cause exceeds the sum of five hundred dollars exclusive of costs.

That your petitioners offer and file herewith a bond with good and sufficient surety for their entering in the said circuit court of the United States for the district of Louisiana, on the first day of its next session to be held as provided by law, a copy of the record in this suit, and for the payment of all costs which may be awarded by said circuit court in the event that said court shall decide that this suit was improperly removed thereto, and they pray this honorable court to proceed no further in this cause, and to cause the record herein to be removed and sent into said circuit court of the United States for the fifth circuit and district
93 of Louisiana, as provided by the provisions of the act of Congress in such case made and provided, and your petitioners will ever pray, &c.

(Signed) J. R. BECKWITH,
Att'y for petitioner.

Bond for removal.—Filed Dec'r 30th, 1879.

Know all men by these prsents that we, the Life Association of America and D. M. Frost, of the State of Missouri, and J. R. Beckwith, as principals, and Henry V. Ogden, of the city of New Orleans, State of Louisiana, as surety, are held and firmly bound unto Samuel E. Rundle and Helen Rundle his wife in the penal sum of five hundred dollars, for the payment of which well and truly to be made unto the said Samuel E. Rundle and Helen Rundle his wife, their heirs, representatives, or assigns, we bind ourselves, our heirs, and representatives, jointly and severally, by these presents.

Upon the condition, nevertheless, whereas the said Life Association of America and the said D. M. Frost have made and filed
94 in the fifth district court for the parish of Orleans, State of Louisiana, a petition for the removal of a certain cause therein instituted and brought against them and other defendants, wherein the said Samuel E. Rundle and Helen Rundle his wife are plaintiffs, being numbered No. 10253 of the docket of said court, to the circuit court of the United States in and for the district of Louisiana.

Now the condition of this obligation is such that if the said Life Association of America and the said D. M. Frost, or either of them, shall enter in the said circuit court of the United States, on the first of its next session, a copy of the record in said above described and numbered suit, and shall pay all costs which may be awarded by said circuit court in the event that said circuit court shall hold that said suit was wrongfully or improperly removed thereto, then and in that case this obligation shall be null and void, but otherwise in full force and effect.

95 As witness our hands and seals this 29th day of December, A. D. 1879.

(Signed) THE LIFE ASSOCIATION OF AMERICA,
By J. R. BECKWITH &
G. L. HALL, [L. S.]
Its Attorneys.

(Signed) D. M. FROST, [L. S.]
By J. R. BECKWITH AND
G. L. HALL,
His Attorneys.

(Signed) J. R. BECKWITH, [L. S.]

(Signed) HENRY V. OGDEN, [L. S.]
35 *Carondelet st.*

Judgment of circuit court, State of Missouri.

In the circuit court, October term, 1879.

UNITED STATES OF AMERICA.

STATE OF MISSOURI,
City of St. Louis, ss:

Pleas before the Honorable Elmer B. Adams, one of the judges of the circuit court, of the city of St. Louis, of the State of Missouri, and at a term thereof begun and held at the court-house in the city of St. Louis, State of Missouri, on the first Monday of October, in the year of our Lord, 1879.

96 Present, Honorable Elmer B. Adams, judge; John Finn, esq., sheriff; Chas. F. Vogel, clerk.

Be it remembered that at the said term of said court, and on Monday, the 10th day of November, 1879, the following, among other proceedings, were held, to wit:

WILLIAM S. RELFE, AS SUPERINTENDENT OF the Insurance Department of the State of Missouri, plaintiff,
vs.
THE LIFE ASSOCIATION OF AMERICA, DEfendant.

MONDAY, *November* 10, 1879.

Now on this the tenth day of November, 1879, the same being one of the regular court days of the October term, 1879, of this court, this cause came on to be heard, the said plaintiff appearing by Carr & Reynolds, his attorneys, and the said defendant appearing by Irwin Z. Smith, its attorney.

And the court having seen, heard read, and duly considered the report heretofore filed by B. Gratz Brown, esq., heretofore appointed by the court as referee to hear the testimony in said cause offered,

97 and to report his conclusions on the same to the court, and no exceptions having been filed to said report, and exceptions there to having been waived by defendant, and both plaintiff and defendan being now here in court, by their said attorneys, and the defendant making no objections in the premises and the finding of said referee, as appears by said report, being for the plaintiff, it is considered and ad-

judged by the court that the said report be and the same is hereby confirmed, and the court doth find from said report, being for the plaintiff, it is considered and adjudged by the court that the said report be and the same is hereby confirmed, and the court doth find from said report that at the date of the commencement of this action, to wit, October 13th, 1879, the said defendant, The Life Association of America, was insolvent and its condition such as to render its further proceedings hazardous to the public and to those holding its policies.

Wherefore it is ordered, adjudged, and decreed by the court that the Life Association of America, the said defendant, be and it is
98 hereby adjudged and declared insolvent, and its condition such as to render its further proceedings hazardous to the public and to those holding its policies, and this court, under and by virtue of the power and authority vested in it by the statutes of the State of Missouri, doth order, adjudge, and decree that the said defendant, The Life Association of America, a company incorporated under and by virtue of the laws of the State of Missouri, be and it is hereby dissolved pursuant to the provisions of the said statutes, and that said defendant, its officers, agents, servants, solicitors, attorneys, and employees, be, and it and they are hereby, perpetually enjoined from claiming or exercising any control over any of the property, rights, assets, choses in action or moneys of said defendant, and from doing any insurance business whatsoever under or by any authority or pretended right existing or claimed to exist by virtue of said corporation, and from doing any acts in exercise of any of the franchises of the Life Association of America, and from claiming or exercising any corporate rights
99 whatever as such association, and from the further continuance of its business of life insurance, and from any and all business of whatsoever kind and description, except as in this decree hereinafter provided for.

It is further ordered, adjudged, and decreed by this court, under and by virtue of the statutes of this State, that the title to all the assets of the said defendant, The Life Association of America, real, personal, and mixed, and whether situated in this State or elsewhere, be and the same is hereby vested in fee simple and absolutely in William S. Relfe, as the superintendent of the Insurance Department of the State of Missouri, and his successor or successors in such office of superintendent, to hold and dispose of the same for the use and benefit of the creditors and policy-holders of said defendant and such other persons as are or may be interested in such assets.

It is further ordered and decreed by the court that all the rights, claims, and choses in action of said defendant, The Life Association of America, or to which it, or its policy-holders through it, now have or had any right, title, or interest in law or equity, at the date
100 of the commencement of this suit, to wit, October 13, 1879, as well as all the right, title, and interest of said defendant, The Life Association of America, or its policy-holders, through said corporation, to any and all real, personal, or mixed property, wherever the same may be, whether in this State or elsewhere, and to all rights, claims, and choses in action, wheresoever and in whatsoever manner existing, as the same existed, belonged to, or could be claimed by said defendant, or its policy-holders through it, at the date of the commencement of this suit as aforesaid, or which have since then, or shall hereafter accrue, be, and the same are hereby, vested in said William S. Relfe, as such superintendent of the Insurance Department of this State, and his successor and successors in said office of superintendent, for the

use and benefit of the creditors and policy-holders of said defendant, and such other persons as may be interested in the same.

It is further ordered, adjudged, and decreed that the said William S. Relfe, as superintendent of the insurance department, shall
101 forthwith take possession of all the assets, books, papers, choses in action, and effects of said defendant, whether situate in this State or elsewhere, and proceed to collect, adjust, and settle the debts and claims due said defendant, and that he may institute, maintain, and defend, either in his own name, as superintendent of the Insurance Department of the State of Missouri, or in the name of The Life Association of America, where that shall be deemed by him advisable, any and all actions at law or suits in equity in the courts of this or of any other State, or of the United States, affecting the assets of said defendant, or the rights and claims of its policy-holders through it, with power to prosecute, defend, and continue all suits brought by or against said defendant, whether heretofore or hereafter commenced, and whether in the name of said defendant or otherwise.

It is further ordered by the court that Daniel M. Frost, esquire, heretofore appointed by this court in this cause as agent to temporarily take charge of the property of said defendant and to receive its pre-
102 miums and other income, be, and he is hereby, ordered forthwith to turn over and account to the said William S. Relfe, as superintendent as aforesaid, all the property, premiums, and income belonging to said defendant which have come into his hands as such agent, and that he furnish to said superintendent an itemized account of all his receipts as such agent and file a copy of the same with the court in this cause, together with the receipt of said Relfe, for all property, premiums, and income turned over to said Relfe by him, and that he forthwith deliver to said Relfe, as such superintendent, possession of all buildings, books, keys, papers, securities, moneys, and other property which have come into his hands as such agent.

It is further ordered by the court that the said Life Association of America, by its proper officers, and whomsoever else may have possession thereof, convey, assign, transfer, and deliver over to said William S. Relfe, as superintendent of the Insurance Department of the State of Missouri, upon his demand therefor, all the property, real, per-
103 sonal, and mixed, wheresoever found or situated, whether in this State or elsewhere, and all contracts, and all other legal and equitable interests, things in action, and other effects, which belong to said defendant now, or at the commencement of this suit, or which were held in trust for the said defendant, The Life Association of America, or in which it had any beneficial interest then or now, in the same condition they were at the time of the commencement of this suit, and in which it has or had any such interest, and that said defendant deliver over in like manner all deeds, leases, bonds, mortgages, and deeds of trust, books, vouchers, and such other evidences relating thereto.

In case of failure for any reason on the part of the defendant to execute the proper legal and necessary transfers, deeds, and conveyances (but without prejudice to the right of the said plaintiff to proceed against the said defendant and all other persons as for contempt of court), this decree shall stand as such transfer and conveyance, and for the
104 complete execution of such transfers and conveyances, but for no other purposes, the temporary injunction and the permanent injunction in this cause so far as is necessary to enable such deeds, transfers, conveyances, assignments, and delivery to be made are modi-

fied so as to authorize the proper officers of the defendant to make the same as herein ordered and required.

It is further ordered, adjudged, and decreed by the court that the said William S. Relfe, as superintendent of the insurance department of the State of Missouri, his successor and successors in said office, forthwith proceed to the execution of the duties of the trust in the manner and according to and under the statutes of this State in such case made and provided; that he sell and dispose of the real estate and other property of the said defendant, subject to the approval of this court, and execute in his own name as such superintendent all necessary and proper conveyances of the same; that he pay out and dis-
105 tribute all money coming into his hands in the order of payment set forth in the statute, and that he keep accurate and itemized accounts of all receipts and expenditures in this behalf, and on the first day of each term of court to file in this court full reports of all his proceedings in this behalf; and he is at liberty from time to time to apply to this court for such orders, directions, decrees, and process as shall be necessary, for which purpose the record of this cause is kept open.

And it is further ordered and adjudged that said plaintiff have and recover of and from the said defendant his costs and charges in this behalf, laid out, incurred, and expended, to be taxed and approved by the court, and when so approved, to be paid out of the assets of said defendant as provided by law.

STATE OF MISSOURI,
City of St. Louis:

106 I, Chas. F. Vogel, clerk of the circuit court within and for the city of St. Louis, State of Missouri, do hereby certify that the foregoing is a full, true, and perfect copy of the decree rendered in said court on the 10th day of November, 1879, being one of the regular days of the October term, 1879, of said court, in the cause wherein William S. Relfe, as superintendent of the insurance department of Missouri, is plaintiff, and the Life Association of America is defendant, as the same appears in the record of said court.

Witness my hand and seal of said court at my office in said city and State, this 6th day of December, 1879.

[SEAL.] (Signed) CHAS. F. VOGEL, *Clerk.*

STATE OF MISSOURI,
City of St. Louis, ss:

James J. Lindley, presiding judge of the circuit court within and for the city of St. Louis, in the State of Missouri, do hereby certify that the attestation of Charles F. Vogel, who I do also certify is clerk
107 of said court, as such clerk, to the judgment, order, and decree of said court as above written, is in due form and in full compliance with the laws of the State of Missouri and the rules of said court.

Given under my hand and private seal at St. Louis aforesaid, this 6th day of December, 1879.

(Signed) JAMES J. LINDLEY,
Presiding Judge Circuit Court, St. Louis, Mo.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

I, the undersigned, do hereby certify that the foregoing twenty-five pages do contain a true and correct copy of all the proceedings had, and documents filed since December 3d, 1879, up to the present date in

the case wherein Samuel E. Rundle and Helen Rundle are plaintiffs, and the Life Association of America et als. are defendants, No. 10253 of the docket of said court.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of the said court, at the city of New Orleans, on the 31st day of December, 1879, and of the Independence of the United States of America, the 104th year.

(Signed) THOMAS DUFFY, *Clerk.*

108 Proceedings in U. S. circuit court.

Order remanding cause.—Extract from minutes of January 5th, 1880.

SAMUEL E. RUNDLE ET AL.
vs.
LIFE ASSOCIATION OF AMERICA. } No. 8932.

This cause came on to be heard on the motion to dismiss filed by Walter P. Wilcox, receiver herein, on 9th December, 1879, and was argued by counsel. On consideration whereof, it is ordered by the court, that the cause be remanded to the fifth district court for the parish of Orleans, to be there proceeded with according to law.

Motion for appeal.—Extract from minutes of January 9th, 1880.

SAM'L E. RUNDLE ET AL.
vs.
LIFE ASSOCIATION OF AMERICA. } No. 8932.

And now comes the said defendants by G. L. Hall and J. R. Beckwith, their solicitors, and appeal from the judgment of this court herein, dismissing and remanding the cause to the fifth district court for the parish of Orleans to the Supreme Court of the United States,
109 returnable at the next stated term thereof, and prays the court to fix the amount of bond to be given to operate as a supersedeas, and it is ordered by the court that said appeal be allowed, and that the solicitor for complainants be heard on Monday, the 12th instant, at 11 a. m., on the question of amount of the bond to be given.

Order modifying order of January 9th, 1880.—Extract from minutes January 12th, 1880.

SAM'L E. RUNDLE ET AL.
vs.
LIFE ASSOCIATION OF AMERICA. } No. 8932.

Ordered, that the order herein made on 9th January, 1880, on the motion of the defendants for an appeal with supersedeas, be modified so as to allow said motion to be filed instead of being allowed, and that the same shall take effect from the time it was filed.

Submission.—Extract from minutes of January 12th, 1880.

110 This cause came on to be heard on the defendant's motion for an appeal with supersedeas herein filed on 9th January, 1880, and having been argued by counsel, the court took time to consider,

and allowed counsel one week to furnish brief without prejudice to the rights of the defendants.

Order allowing appeal.—Extract from minutes January 23d, 1880.

SAMUEL E. RUNDLE ET AL.
vs.
LIFE ASSOCIATION OF AMERICA. } No. 8932.

This cause came on to be heard on the defendant's motion for a supersedeas, and was agreed by counsel for the parties respectively. On consideration whereof, it is ordered that the appeal be allowed, to operate as a supersedeas, returnable to the Supreme Court of United States on the 2d Monday of October, 1880, upon the said defendants giving bond with good and solvent surety in the sum of seven hundred and fifty dollars.

111 *Bond for appeal.—Filed March 22d, 1880.*

UNITED STATES OF AMERICA:

Know all men by these presents, that we, The Life Association of America, William S. Relfe, superintendent of the insurance department of the State of Missouri, and Daniel M. Frost, special agent, as principal, and Henry V. Ogden, as surety, are held and firmly bound, jointly and severally, unto Samuel E. Rundle and Helen Rundle in the sum of seven hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Samuel E. Rundle and Helen Rundle, their heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated the 22d day of March, in the year of our Lord eighteen hundred and eighty.

Whereas the Life Association of America, Relfe, superintendent, &c., and Frost, special agent, &c., having heretofore, to wit, on the
112 9th day of January, 1880, taken an appeal to the Supreme Court of the United States from and to reverse the judgment rendered on the fifth day of January, 1880, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Samuel E. Rundle and Helen Rundle vs. The Life Association of America, William S. Relfe, superintendent, &c., and Daniel M. Frost, special agent, &c., et als., No. 8932 of the docket thereof:

Now, the condition of the above obligation is, that if the above bounden Life Association of America, Relfe, superintendent, and Frost, special agent, shall prosecute their said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) THE LIFE ASSOCIATION OF AMERICA,
& DANIEL M. FROST, [L. S.]
Special Agent,
By their attorney, G. L. HALL. [L. S.]
(Signed) W. S. RELFE, [L. S.]
As Superintendent of the Insurance Department of the State of Missouri.
(Signed) HENRY V. OGDEN. [L. S.]

113 Signed, sealed, and delivered in the presence of—
(Signed) G. L. HALL.
(do.) JOSEPH DEVONSHIRE.

Approved.
(Signed) EDWARD C. BILLINGS,
Judge.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

Personally appeared Henry V. Ogden, who being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, 35 Carondelet st., and is worth the full sum of seven hundred and fifty dollars over and above all of his debts and liabilities and property exempt from execution.
(Signed) HENRY V. OGDEN.

Subscribed and sworn before me this 22d day of March, 1880.
(Signed) A. S. BECK,
Notary Public in and for the Parish of Orleans, in the State of Louisiana.

114 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 113 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had on the trial of the case of Samuel E. Rundle et al. vs. Life Association of America, No. 8932 of the docket of said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 20th day of July, A. D. 1880, (nineteen words erased null.)
[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 20th day of July, A. D. 1880.

EDWARD C. BILLINGS, *Judge.*

115 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Samuel E. Rundle and Helen Rundle, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on

the second Monday of October next, pursuant to a motion and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein The Life Association of America, William S. Relf, superintendent of the Insurance Department of the State of Missouri, and Daniel M. Frost, special agent, &c., are defendants and appellants, and you and each of you are complainants and appellees, to show cause, if any there be, why the decree rendered against the said Life Association of America and others, as in said motion and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 22nd day of March, in the year of our Lord one thousand eight hundred and eighty.

EDWARD C. BILLINGS, *Judge.*

116 (Indorsed:) United States circuit court. No. 8932. The Life Association of America, Wm. S. Relf, superintendent of the Insurance Department of the State of Missouri, & Daniel M. Frost, special agent, &c., are defendants & appellants, vs. Samuel E. Rundles & Helen Rundels are plaintiffs & appellees. Citation.

Marshal's return.

Received May 10, 1880, by the U. S. marshal, and on June 10, 1880, I served a copy of the within citation of appeal on Samuel E. Rundell and Helen Rundell, appellees herein, by delivering the same to A. Goldthwait, esq., the attorney of record for the aforesaid appellees, in person, in the city of New Orleans, district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Personally appeared befora me, E. S. Curry, a deputy U. S. marshal in and for the district of Louisiana, and makes oath that he served a true copy of the within citation of appeal on the appellees herein named as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Subscribed and sworn before me June 18th, 1880.

F. A. WOOLFLEY,
Commissioner United States Circuit Court District of Louisiana.

(Indorsement on cover:) No. 897. The Life Association of America, William S. Relf, superintendent of the Insurance Department of Missouri, and Daniel M. Frost, special agent, &c., appellants, vs. Samuel E. Rundle and Helen Rundle. Louisiana C. C. U. S. Filed 30th September, 1880.

OFFICE SUPREME COURT U.S.
FILED
DEC 13 1880
JAMES H. McKENNEY, CLK

IN THE

SUPREME COURT OF THE UNITED STATES.

[No. 897.]

October Term, 1880.

THE LIFE ASSOCIATION OF AMERICA, WILLIAM S. RELFE, as Superintendent of the Insurance Department of the State of Missouri, and DANIEL M. FROST, Special Agent, etc., *Appellants*,

vs.

SAMUEL E. RUNDLE AND HELEN RUNDLE, *Appellees*.

Appeal from the Circuit Court of the United States for the District of Louisiana.

ARGUMENT FOR APPELLANTS.

[*Submitted under the 20th Rule.*]

JAMES CARR and
GEO. D. REYNOLDS.
Solicitors for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES.

[No. 897.]

October Term, 1880.

THE LIFE ASSOCIATION OF AMERICA, WILLIAM S. RELFE, as Superintendent of the Insurance Department of the State of Missouri, and DANIEL M. FROST, Special Agent, etc., *Appellants*,

vs.

SAMUEL E. RUNDLE AND HELEN RUNDLE, *Appellees*.

Appeal from the Circuit Court of the United States for the District of Louisiana.

STATEMENT OF THE CASE.

On the 5th day of November, 1879, the appellees filed their petition against the Life Association of America, Daniel M. Frost, L. E. Alexander and John R. Fell, in the Fifth District Court for the Parish of Orleans, in which they alleged, that the Life Association of America was a corporation incorporated under the laws of the State of

Missouri, and had its location and chief place of business at St. Louis, in the State of Missouri, and had an office and was doing business in the City of New Orleans, in the State of Louisiana. That D. M. Frost was temporary agent or receiver of said Life Association of America, residing at St. Louis, in the State of Missouri. That L. E. Alexander was receiver of the Columbia Life Insurance Company of Missouri, likewise residing at St. Louis in the State of Missouri; and that John R. Fell resided at New Orleans, in the State of Louisiana, and was the agent of said Life Association of America at said last-named place.

The appellees filed said petition on behalf of themselves and all other holders of policies that may have been issued by the Life Association of America to, and held by, citizens resident of the State of Louisiana, as may be entitled to share in the trust fund described in said petition, who will come in and contribute to the costs and expenses of this suit.

The appellees then set out three policies issued by the Life Association of America to them in 1877 and 1878. By the first it insured the life of Helen Rundle for the benefit of Samuel E. Rundle, her husband; and by the second and third, it insured the life of Samuel E. Rundle for the benefit of Helen Rundle, his wife. It is alleged that said policies, and all other policies issued by said Life Association of America to citizens resident in the State of Louisiana, were issued under an express contract by said Life Association of America, whereby it agreed that a large part of all premiums that might, from time to time, be paid by the holders of policies issued to and on the lives of residents of Louisiana, should be retained and invested, from time to time, as received, or as soon thereafter as practicable, in the State of Louisiana, and there kept invested as a special and continuing security for the payment of all claims arising under and by virtue of such policies as might, from time to time, become payable. The portion not so to be retained was

small — a sum, necessary to cover the general management of said insurance business, was to be sent to the chief office of the Life Association of America in St. Louis, Missouri. The sum to be retained and invested in Louisiana was to be at least seventy per cent. of said premiums.

That in execution of said contract, said Life Association of America, through its Louisiana Department, as it was called, or through other agents, trustees or officers, did invest large sums of money in New Orleans and other towns and cities in the State of Louisiana, not now known to said appellees, and that these investments consist of notes or other choses in action, secured by mortgage on a considerable amount of real estate in New Orleans and, perhaps, in other cities and towns in the State of Louisiaua, together with other property and effects which appellees can not specify nor particularize, because they have not sufficient knowledge concerning the same; but all of which is known to said Life Association of America and its agents. All such property is subject to the aforesaid trust security, and is liable to the satisfaction of claims arising under or by virtue of policies, issued, as aforesaid, to and on the lives of residents of Louisiana, first and before all other claims or liabilities of said Life Association of America. That said assets are entirely inadequate to pay the claims arising under and by virtue of said policies, and that said Life Association of America is insolvent.

That on the application of appellant, Relfe, as the Superintendent of the Insurance Department of the State of Missouri, a temporary injunction was granted by the Circuit Court of the City of St. Louis, in the State of Missouri, restraining said Life Association of America from doing any further business, and appointed appellant, D. M. Frost, as temporary agent, to take charge of the affairs of said Life Association of America.

That the jurisdiction of said Circuit court of the City of St. Louis, Missiouri, and the authority of its said temporary agent, do not extend to the State of Louisiana, and

can not be exercised over said property to the prejudice of the rights and interest of its citizens, as hereinbefore shown. That it would be a violation of the rights of the holders of the policies issued to residents of Louisiana, and contrary to the contract of said Life Association of America to allow this to be done, *i. e.*, to allow such assets in the State of Louisiana to go into the hands of said agent, Frost, and be thereby withdrawn from the jurisdiction of the courts of the State of Louisiana; and appellees show that said assets will be so withdrawn, if any agent of said Life Association of America is allowed to get possession or control of said Louisiana assets. And furthermore, to allow such withdrawal would greatly embarrass, if not defeat, the rights and claims of appellees and other Louisiana policy holders of said Life Association of America, standing in a like position. That the retention and management of said property and the disposition of its proceeds through the courts of Louisiana is necessary to the protection of the rights of citizens of Louisiana, having the prior exclusive claim thereon. That said property is by no means sufficient to pay the claims on it due under said trust to such Louisiana policy holders.

That by the charter of said Life Association of America it was authorized to organize or recognize departments of said Association in the different States of the United States, and to enter into contract with the departments so organized or with the policy takers in the several departments, or with a certain number as trustees for all inside a State or department, concerning the terms, conditions and securities under which the policies in said several departments should be issued, and to which they should be subject, and under this power they made a contract which, in effect, created the trust hereinbefore stated.

Policies were solicited by said Association of residents in Louisiana, on the faith of such agreement and security, and would not have been taken without it. Such was the case of the other policies issued by said Life Association to resi-

dents of Louisiana. For a long time, said Life Association of America recognized and acted on said agreement, and recognized such obligation and trust. No one has had any authority to annul or in any way modify the trust or obligation, which accompanied the issuance of, and attached to, said policies.

Appellees show that the department of Louisiana was recognized as a separate department of said Life Association of America, in execution of the agreement of said Life Association of America. The business of said Life Association of America for a long time was managed and conducted by a president and board of directors or trustees for said department; and the investments were made by said board of directors, by which the property in Louisiana, hereinbefore referred to, was acquired as subject to the trust stated. For a long time, the duty of continuing each investment for such security has not been performed by said board of directors, the same having been discontinued, and for a long time John B. Hood, and afterwards John R. Fell, has acted as the only or chief agent of the Life Association of America at New Orleans; and said John R. Fell, as such agent, is in possession of the property, books, papers and assets of said Life Association of America in Louisiana, and can discover and produce the contracts and agreements, upon which the said rights of appellees and those similarly situated depend; and appellees can not show the same to the court for inspection, without such a discovery.

The appellees then pray that said Life Association of America, a corporation of the State of Missouri; John R. Fell, its agent at New Orleans; D. M. Frost, its temporary agent or receiver, residing at St. Louis, Missouri, and L. E. Alexander, receiver of the Columbia Life Insurance Company of Missouri, residing at St. Louis, in the State of Missouri, absentees from the State of Louisiana, through a curator *ad hoc*, to be appointed by the court in which said suit was brought, be cited to appear and answer the appellees' petition. That said court will take jurisdiction of

said trust property of every kind and description, belonging to, or standing in the name, of said Life Association of America, situated in the State of Louisiana; and appellees prayed for the appointment of a receiver, to take possession of said property, and cause the same to be administered and converted into money by such receiver, and to be applied to the payment of the claims arising under or by virtue of the policies of said Life Association of America, issued to, and held by, residents of the State of Louisiana, according to the agreements, conditions or trusts under which such policies were issued, according to the net present value of the same respectievly; and that said court would order a reference, to ascertain what claims, liens or privileges there are, or that may have a beneficial interest in said fund; and that John R. Fell individually, or as agent of said Life Association of America, may discover and set forth a true copy of the written contract or contracts with said Life Association of America, respecting and for the benefit of its policy holders, resident in the State of Louisiana.

Thereupon, said court appointed Walter B. Wilcox receiver of the Life Association of America, for the branch department of the State of Louisiana, to take charge and possession of the property belonging to said Life Association of America in the State of Louisiana, upon his giving bond, as the law requires, in the sum of $20,000; and Francis B. Lee was appointed curator *ad hoc*, to represent D. M. Frost, temporary agent or receiver of said Life Association of America, residing at St. Louis, in the State of Missouri, and L. E. Alexander, receiver of the Columbia Life Insurance Company of Missouri, both absentees from the State of Louisiana, as prayed for in the appellee's petition. (p. 6 of transcript).

On application of the appellees, the amount of the bond of the receiver was reduced from $20,000 to $10,000. (pp. 6 and 8 of transcript).

On the 8th day of November, 1879, a citation was issued for D. M. Frost, temporary agent or receiver of the Life

Association of America, and L. E. Alexander, receiver of the Columbia Life Insurance Company, to appear and answer the appellees' petition within ten days after the service thereof; and said citation was served the 10th day of November, 1879, on F. B. Lee, curator *ad hoc*, for each of said parties. (pp. 10 and 11 of transcript).

On the 10th day of November, 1879, the Life Association of America was *dissolved* by the decree of the circuit court of the City of St. Louis in the State of Missouri, in a suit wherein the appellant, William S. Relfe, as Superintendent of the Insurance Department of the State of Missouri, was plaintiff, and the Life Association of America was defendant, said court having jurisdiction of the parties and subject-matter. And it was ordered, adjudged and decreed by said court, "that the title to all the assets of the said defendant, The Life Association of America, real, personal and mixed, and whether situated in this State or elsewhere, be, and the same is hereby vested in fee simple and absolutely in William S. Relfe, as the Superintendent of the Insurance Department of the State of Missouri, and his successor or successors in such office of Superintendent, to hold and dispose of the same for the use and benefit of the *creditors* and *policy-holders* of said defendant and such other persons as are or may be interested in such assets." (pp. 31 and 32 of transcript.)

On the 17th day of November, 1879, the appellant, Relfe, as the legal representative of the Life Association of America, dissolved, voluntarily appeared in said Fifth District Court and filed said decree of the circuit court of the City of St. Louis in the State of Missouri, in this cause, and on his motion it was ordered by said court, that he be made a party to this suit (p. 12 of transcript). And on the 21st day of November following said order was served on Alfred Godthwaite, attorney for appellees (p. 13, *Ibid.*)

On the 28th day of November following, appellant Relfe filed his petition in said court for the removal of

said suit from said court into the Circuit Court of the United States for the District of Louisiana. In this petition it is alleged, "that the controversy in said suit is between citizens of different States, and that the *petitioners, at the time of the commencement of this suit, were and still are, citizens of the State of Missouri*, and that *Samuel E. Rundle and Helen Rundle, his wife, were then, and still are, citizens of the State of Louisiana;* and your petitioner, William S. Relfe, states that he is the Superintendent of the Insurance Department of the State of Missouri, and, as such, is in charge of the affairs and assets of the Life Association of America; that said company is an insurance company, organized under the laws of the State of Missouri; that it is, and for a long time has been, dissolved, and that he is the legal representative of said company, and is a citizen of the State of Missouri."

In other respects the petition was in the usual form, and with it a bond with a good surety, in the sum of $500. was tendered and filed with said petition. On the 8th day of December following a transcript of the record in this suit was filed in the Circuit Court of the United States for the District of Louisiana by appellant, Relfe. The next day Walter B. Wilcox, *the receiver* appointed by the Fifth District Court for the Parish of Orleans and State of Louisiana, appeared in the Circuit Court of the United States for the District of Louisiana, and moved said court to dismiss the said cause from this court, and strike it from the docket thereof for the following grounds:

1. That this court is without jurisdiction either of the person or the subject-matter.

2. That said William S. Relfe, Superintendent of Insurance for the State of Missouri, has no standing in this, being a creature of the State of Missouri, and without capacity to sue in this honorable court, or to remove causes hereto under the Acts of Congress.

3. That this cause was improperly removed from the Fifth District Court for the Parish of Orleans.

4. That said Fifth court having taken jurisdiction and appointed a receiver to take charge of the property, this court cannot interfere with the possession of the receiver of said Fifth District court.

On the 30th day of December, 1879, another petition in the usual form for removal was filed in the said Fifth District court by the Life Association of America and D. M. Frost, its temporary agent or receiver. (pp. 29, 30, transcript.) This petition was accompanied with a bond in the usual form with a good surety. (p. 30, *ibid.*)

On the 5th day of January, 1880, the motion of Walter B. Wilcox, *receiver* in said suit, to remand the same to the Fifth District court for the Parish of Orleans was sustained, and an order made remanding said cause accordingly. (p. 35, *ibid.*)

On the 9th day of January, 1880, an appeal was prayed by appellants to this court from said order remanding said cause, and an appeal was allowed. (p. 35, *ibid.*) And on the 23d day of January following the court below made an order that said appeal should operate as a *supersedeas*, upon the appellants giving a bond with good and solvent surety in the sum of $750. (p. 36, *ibid.*) Such a bond was given, approved and filed on the 22d day of March following. (p. 36, *ibid.*)

As there is some doubt whether the record in this suit shows that the amount in controversy exceeds the sum of $5,000, exclusive of costs, the affidavit of appellant Relfe was filed with the transcript herein, and prayed to be made a part of the record, showing that the amount in controversy exceeds the sum of $50,000. This affidavit was inadvertently omitted from the transcript, as published,

and is as follows (the original being on file in this court), to-wit:

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1880.

THE LIFE ASSOCIATION OF AMERICA AND WILLIAM S. RELFE, as the Superintendent of the Insurance Department of the State of Missouri, *Appellants*,	*Appeal from the Circuit Court of the United States for the District of Louisiana.*
vs.	
SAMUEL E. RUNDLE AND HELEN RUNDLE, *Appellees.*	

This day personally appeared before the undersigned, Clerk of the Circuit Court of the United States for the Eastern District of Missouri, William S. Relfe, who, being by me first duly sworn according to law, deposes and says: That he is one of the appellants in the above entitled cause; that at the time of the commencement of said suit he was, ever since has been, and still is, a citizen and resident of the State of Missouri; that he is the same person described in the petition or bill of complaint of the appellees in this cause as "one Relfe;"

That on the 16th day of June, 1868, the Life Association of America was duly organized under, and pursuant to the statutes of the State of Missouri, as a Mutual Life Insurance corporation for the purpose of making assurance upon the lives of individuals and every assurance pertaining thereto and connected therewith, and had its home, chief office and place of business at the City of St. Louis, in the State of Missouri, from the time of its organization as aforesaid, until the 10th day of November, 1879, when it was dissolved, as hereinafter stated and as will be seen by the allegations in the bill of complaint of appellees in this cause, and by the certified copy of the decree of dissolution, which was filed in this cause by the appellant, Relfe,

when he was made a party to this cause, which said certified copy is in the record of this cause;

That for the three years last past and upwards, affiant has been, and still is, the Superintendent of the Insurance Department of State of Missouri;

That on the 10th day of November, 1879, by the consideration and judgment of the Circuit Court of the City of St. Louis, in the State of Missouri, in a suit wherein this affiant, as such superintendent, was plaintiff, and said Life Association of America was defendant, said Life Life Association of America was declared insolvent and dissolved as a corporation, and all its assets were by said decree, and according to the Statutes of the State of Missouri, in such case made and provided, vested in fee simple and absolutely in this affiant as such superintendent, and in his successor, or successors in office, to hold and dispose of the same for the use and benefit of all the creditors and policy-holders of said Life Association of America and such other persons as may be interested in such assets; That by said decree Daniel M. Frost, who is called and designated in the bill of complaint of the appellees as one D. M. Frost, and who in said cause, pending its hearing, had been appointed temporary agent, was relieved and discharged from any and all further duties in the premises, and ordered to, and thereupon did, turn over all property in his possession as such agent to affiant on said 10th of November, 1879, and said Frost from the date last mentioned ceased to have any further interest, right, title or connection with the said Life Association of America, its assets or affairs.

Affiant further states that in and by said decree the officers of said Life Association of America were directed and required to convey, assign, transfer and deliver to this affiant as such superintendent as aforesaid, all the property, real, personal and mixed, wheresoever found, whether in the State of Missouri or elsewhere, and all contracts, and allother legal and equitable interests, things in action and

other effects which belonged to said Life Association of America on the 13th day of October, 1879. the day upon which the suit aforementioned was commenced in the said Circuit Court of the City of St. Louis.

That in obedience to said decree said Life Association of America, by its proper officers, on said 10th of November, 1879, among other property, duly conveyed, assigned and transferred to this affiant as such superintendent as aforesaid, all the property, real, personal and mixed, contracts and all other legal and equitable interests, things in action and other effects which belonged to said Life Association of America, in the State of Louisiana, on the 13th day of October, 1879.

That the property in the State of Louisiana thus conveyed, assigned and transferred to this affiant as superintendent, as aforesaid, is the sole and only subject-matter in dispute in this cause; and that, exclusive of costs, it exceeds the sum or value of fifty thousand ($50,000) dollars; that said property is the same property which the appellees describe in their petition or bill filed herein, in the following language, to wit: "Said Life Association of America, "through its Louisiana department, as it was called, or "through other agents, trustees or officers, did invest large "sums of money in New Orleans, and other towns and "cities in the State of Louisiana, not known to your peti- "tioners; and that these investments consist of notes, or "other choses in action, secured by mortgage, and a con- "siderable amount of real estate in New Orleans, and, per- "haps, in other cities and towns in the State of Louisiana, "together with other property and effects which your peti- "tioners can not specify nor particularize * * * *.

"All such property is subject to the aforesaid trust se- "curity, and is liable to the satisfaction of the claims aris- "ing under, or by virtue of the policies issued as aforesaid, "to and on the lives of residents of Louisiana, first and be- "fore all other claims or liabilities of said Life Associ- "tion."

Affiant further states that the aggregate amount of claims of policy holders in the Life Association of America, at the time of commencement of this suit, who were citizens and residents of the State of Louisiana, was, and still is, the sum of $181,000 and upwards.

That the appellees seek by this suit to subject all of the property hereinbefore described, and of the value of upwards of $50,000, as aforesaid, to the payment of the policies held by citizens of the State of Louisiana alone, and to this end they had a receiver appointed by the Fifth District court, for the Parish of Orleans, in said State, to take possession of said property, and prevent this affiant from obtaining possession or disposing thereof, or controlling the same; and appellees seek to have said receiver administer upon and convert the same into money, and apply the proceeds to the payment of the claims of Louisiana policy holders exclusively.

Affiant moves the court to have this affidavit spread upon the record in this cause, and made a part of the record therein.

W. S. RELFE.

Subscribed and sworn to before me this 28th day of September, 1880.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the
[SEAL] Circuit Court of the United States, for the Eastern District of Missouri, at office in the City of St. Louis, in said district.

M. M. PRICE, Clerk.
By T. L. CRAWFORD, D. C.

(Endorsed). Supreme Court of United States, 1880, October Term, No. 897. Life Association of America *et al.*, appellants, v. Samuel E. Rundle, *et al.*, appellees. Affidavit of appellant, W. S. Relfe, as to amount in controversy, etc. Filed September 30, 1880.

By a written stipulation likewise filed with said transcript, this cause is submitted by the solicitors for the respective

parties on printed arguments under the 20th rule of this court.

ASSIGNMENT OF ERRORS.

On this record the appellants assign the following errors:

1. The court below erred in permitting Walter B. Wilcox, the *receiver* in said suit, to appear and move said court to remand said suit to the Fifth District court for the Parish of Orleans. He was no *party* to said suit; nor did he sustain such relation to it as to entitle him to make such motion.

2. Said court erred in sustaining said motion, and in making the order remanding said cause.

3. The appellants, by virtue of their personal citizenship in the State of Missouri, as against the appellees, citizens of the State of Louisiana, were entitled to remove said suit from said Fifth District court for the Parish of Orleans into the Circuit Court of the United States for the District of Louisiana. And as appellants made their application in due time and in proper form in said Fifth District court, to remove said suit into said Circuit Court of the United States for the District of Louisiana, and filed a copy of the record therein in said latter court, it thereby acquired jurisdiction, and it erred in making the order remanding said suit to the former court.

ARGUMENT.

The question presented by the record in this case is the right of the appellant, William S. Relfe, Superintendent of the Insurance Department of the State of Missouri, as the successor in interest to, and the legal representative of, the Life Association of America, a dissolved corporation of said State, to remove this suit from the Fifth District court for the Parish of Orleans, in the State of Louisiana, to the Circuit Court of the United States for the District of Louisiana. It is true that the appellants, the Life Association of America, and D. M. Frost, its temporary agent or receiver,

likewise filed and presented a petition and bond for a removal of said suit; but after the dissolution of the Life Association of America by the decree of the Circuit court of the City of St. Louis, in the State of Missouri, on the 10th day of November, 1879, (five days after the commencement of this suit), and the vesting of "the title to all the assets of the said defendant, the Life Association of America, real, personal and mixed, and whether situated in this State [Missouri] or elsewhere * * * in fee simple, and absolutely in William S. Relfe, as the Superintendent of the Insurance Department of the State of Missouri, and his successor or successors in such office of Superintendent, *to hold and dispose of the same for the use and benefit of the creditors and policy-holders of said defendant and such other persons as are or may be interested in such assets*," the Life Association of America and D. M. Frost, its temporary agent or receiver, were thereby superseded as the real parties defendant in this suit, and the appellant, Relfe, became the real party in interest (p. 32 of transcript).

The Life Association of America was, at the time of the commencement of this suit, a corporation organized under the laws of the State of Missouri for the purpose of doing a Life Insurance business, with its chief office and place of business at the City of St. Louis in said State (pp. 1 and 2 of transcript). It appeared to the suit in the Circuit Court of the City of St. Louis in the State of Missouri, wherein William S. Relfe, as Superintendent of the Insurance Department of the State of Missouri was plaintiff, and the Life Association of America was defendant (p. 31 of transcript). It follows, then, that that court had jurisdiction over the parties and the subject-matter of said suit, and that the same "effect" must be given to that decree in the courts in the State of Louisiana, as it has by law or usage in the courts of the State of Missouri. (§ 1, art. IV, Constitution of the United States; § 905 Rev. Stats. of U. S.; Christmas v. Russell, 5 Wall. 290; Lafayette Insurance Co. v. French, 18 How. 404.)

Now what is the legal "effect" of said decree? Manifestly to dissolve the Life Association of America, and to vest the title to all its assets in appellant, Relfe, as *trustee*, "to hold and dispose of the same for the use and benefit of the creditors and policy-holders of said defendant [The Life Association of America] and such other persons as are or may be interested in such assets."

The assets of an insolvent and dissolved corporation are a *trust* fund for the benefit of all its creditors. This has been the doctrine of courts of equity ever since the decision of the case of Wood v. Dummer, 3 Mason, 308.

Appellant Relfe, as Superinteadent of the Insurance Department of the State of Missouri, thus became the *trustee* of this trust fund, and the successor in interest to, and the legal representative of, the Life Association of America; and in his capacity of trustee it not only was his right, but it was his *duty* to protect that part of the trust fund locally within the jurisdiction of the courts of the State of Louisiana, as well as the part thereof in the State of Missouri and other States.

The second section of the third article of the Constitution of the United States provides as follows: "The judicial power shall extend to all cases, in law and equity * * * to *controversies* * * * between citizens of different States." This provision of the Constitution was carried out by the Act of Congress, entitled "An Act to determine the jurisdiction of Circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes," approved March 3, 1875, (Desty's Federal Procedure, p. 71). The second section is as follows:

"That any suit of a civil nature at law or in equity, now pending or hereinafter brought in any State court, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars * * * in which there shall be a controversy between citizens of *different* States * * * either party may remove said suit into the Cir-

cuit Court of the United States for the proper district; and when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the plaintiffs or defendants actually interested in such controversy, may remove said suit to the Circuit court of the United States for the proper district."

The Life Association of America, at the time of the commencement of this suit, was a corporation created and organized under the laws of the State of Missouri, with its chief office and place of business at St. Louis, in said State. This constituted it a *citizen* within the purview of the Constitution, and the Act of Congress cited, so as to entitle it to remove this suit from the State court in which it was brought to the Circuit Court of the United States for the District of Louisiana.

Boom Co. v. Patterson, 98 U. S. 403.
Muller v. Dows, 94 *Ib.* 444.
Railway Co. v. Whitton, 13 Wall. 270.
Lafayette Ins. Co. v. French, *supra*.

Says Mr. Justice Field, in delivering the opinion of the court in the case of Boom Co. v. Patterson, *supra*: "And in Gaines v. Fuentes, 92 U. S. 20, it was held that a controversy between citizens is involved in a suit whenever any property or claim of the parties, capable of pecuniary estimation, is the subject of litigation, and is presented by the pleadings for judicial determination."

The appellees were citizens of the State of Louisiana at the time of the commencement of this suit, and appellant, Frost, temporary agent or receiver of the Life Association of America at the time of the commencement of this suit, was a citizen of the State of Missouri. This is shown by the appellee's petition.

It follows, then, from the foregoing decisions, that the Life Association of America and D. M. Frost were entitled

to remove this suit into the Circuit Court of the United States, on the ground that the one was a corporation of the State of Missouri, and had its chief office and place of business at St. Louis, in said State, and the other was a citizen thereof.

When the Life Association of America was *dissolved* by the decree of the Circuit Court of the City of St. Louis, in the State of Missouri, on the 10th day of November, 1879, its whole legal *status* was changed. All its assets became a *trust* fund for the payment of all its creditors, and appellant Relfe, the *trustee* thereof; and being a trustee, it was his duty to collect that part of its assets in the State of Louisiana, as well as in the State of Missouri, and elsewhere, and convert them into money, and distribute the money among all its creditors, *pro rata*.

Wood v. Dummer, 3 Mason, 308.
Sawyer v. Hoag, 17 Wall, 610.
2 Story's, Eq. Jur., § 1252.

The first section of the fourth article of the Constitution of the United States has the following provision, viz: "Full faith and credit shall be given in each State to the public acts, records and *judicial* proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the *effect* thereof."

By the act of Congress, of May 26th, 1790, (Rev. Stats. of U. S., § 905, p. 171); this provision of the Constitution was put in operation as follows: "The records and *judicial* proceedings of any State or Territory, or of any such country, shall be proven or admitted in any other court within the United States, by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding Magistrate, that the said attestation is in due form. And said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court with-

in the United States, as they have by law or usage in the courts of the State, from which they are taken."

Now what was "the effect" of the decree of the Circuit court of the City of St. Louis, in the State of Missouri, upon the Life Association of America? It is shown in the following sections of the Revised Statutes of Missouri, 1879, viz:

SEC. 6037. Whenever it shall appear to the Superintendent of the Insurance Department, from any examination made by himself or from the report of the person or persons appointed by him, or from the statements of the company, or from any knowledge or information in his possession, that the capital stock or guarantee fund of any company heretofore or hereafter incorporated or organized under the laws of this State, doing in this State any kind of insurance business, is impaired, or that its liabilities exceed its available assets, or that its premium notes are below the amount required, or of a kind and character different from that required, or that such company is insolvent, or that its condition is such as to render its further proceedings hazardous to the public, or to those holding its policies; said Superintendent may institute suit or proceedings in the Circuit court of the county or city in which said company was organized, or in which it has, or last had its principal or chief office or place of business, to enjoin said company from further prosecution of its business, either temporarily or perpetually, or for such injunction and the dissolution of said company, and the settlement and winding up of its affairs, or for any or all of said remedies combined, or for such other decrees and relief, as under the provisions of this law, the court shall deem advisable.

SEC. 6038. Such suit shall be commenced by filing a petition in the name of the Superintendent of the Insurance Department of this State, as plaintiff, against the company proceeded against as defendant, and said petition shall contain a brief statement of the condition of the company proceeded against, or of the causes upon which the proceeding

is based; it may also contain a prayer for temporary or permanent injunction, or for both, and shall conclude with a prayer for general relief, under which prayer the court may grant any relief or issue any injunction or writ, and make any decrees or orders under, and within the provisions of this chapter, as shall be found advisable or necessary.

SEC. 6042. If the Superintendent shall apply either at or after the filing of the petition for the appointment of an agent to temporarily take charge of the property of the defendant, and to receive its premiums and other income, and the judge or court is of opinion that such course is necessary or proper, the judge or court may appoint some suitable and competent person who shall act as such agent until a decree dissolving the company is rendered, unless sooner removed. Said agent shall give bond in such sum as shall be fixed by the court, and shall be empowered to receive all moneys paid to the defendant or due it from any source, and to hold all property and assets of which the defendant is in possession. * * * Said appointment shall in no case extend beyond a final decree in the cause. The possession of the agent so appointed, shall be held to be the possession of the court. * * *

SEC. 6043. Upon the rendition of a final judgment dissolving a company, or declaring it insolvent, all the assets of such company shall vest in fee simple and absolutely in the Superintendent of the Insurance Department of this State, and his successor or successors in office, who shall hold and dispose of the same for the use and benefit of the creditors and policy-holders of such company and such other persons as may be interested in such assets.

SEC. 6044. The said Superintendent, upon the rendition of judgment as aforesaid, shall take immediate possession of the assets, books and papers, and proceed to collect the debts and claims due such company, unless disposition of the assets of said company is made by a re-insurance of the company, as provided in this article. Said Superintendent shall sell and dispose of the real estate and other property

of such company, and may execute in his own name, as Superintendent of the Insurance Department, all necessary and proper conveyances of the same; he may also in his own name, as such Superintendent, maintain and defend all actions in the courts of this or any other State, or of the United States, relating to such company, its assets, liabilities and business.

Sec. 6045. The court or judge in or before whom the case is pending, upon the application of said Superintendent, shall limit and may extend the time for the presentation of claims against such company, and notice thereof shall be given in such manner as said court or judge shall direct; and any creditor neglecting to present his claim within the time so limited, shall be debarred of all right to share in the assets of such company. Said court shall appoint one or not more than three disinterested persons as commissioners to receive and decide upon the claims presented against such company, who shall give notice of the times and places of their meeting for that purpose, in such manner as said court shall prescribe, and within one month after the expiration of the time so limited, shall file with the clerk of said court a list of the claims presented to them, specifying those allowed, the amount allowed and those disallowed.

Sec. 6046. The Superintendent, in case of life companies, shall ascertain the net present value of each policy in force in such company, and the amount of each policy matured, by death or otherwise, at the date of the decree dissolving such company; for that purpose he shall use the American experience table of mortality, with interest at the rate of four and one-half per cent. per annum; and he shall file with the clerk of said court, a certificate showing the net present value of and the amount of death and other matured claims on each of said policies, and such net present value shall be the surrender value of each of said policies; and in case of companies other than life, he shall ascertain the amount of premiums unearned on each policy outstanding and in force at the date of the decree dissolving the

company, and the amount of losses outstanding at that date.

Sec. 6047. Unless, under the provisions of this article, reinsurance of a dissolved company is effected and its assets conveyed to the reinsuring company, the Superintendent of the Insurance Department, under the direction of said court, shall apply the sums realized from the assets of such dissolved company: first, to payment of all the expenses of closing the busines and disposing of the assets of such company; secondly, to the payment of all lawful taxes and debts due the State, and the United States and the counties and municipalities of this State; thirdly, to the payment of the death losses and matured policy claims; fourthly, to the payment of the debts and claims allowed against such company, and the unearned premiums and the surrender value of its policies, in proportion to their respective amounts: and lastly, any sums remainng in the hands of said Superintendent after the payments have made in full as herein provided, shall be disposed of in such manner as said court shall order and direct: Provided, however, that if the company is a life company and has deposits, for policy-holders, or for the security of registered policies or annuity bonds, such deposits shall be disposed of as in this article is specially provided in respect to the same. And said court may make all orders and decrees necessary and proper in reference to the title, possession, disposition and distribution of all assets, and the allowance and satisfaction of claims against said company, and in any other matter relating to its affairs and business.

The effect of this decree was, *inter alia*, to *abate* this suit as to the Life Association of America.

National Bank v. Colby, 21 Wall. 609.
Farmers and Mechanics' Bank v. Little, 8 Watts & S. 277.
Greeley v. Smith, 3 Story, 657.
Merrill v. Suffolk Bank, 31 Me. 62.
McCullough v. Norwood, 58 N. Y. 562.

Ordway v. Bank, 47 Md. 217.

Another effect of this decree was to vest the *legal* title to all the assets of the Life Association of America in the appellant Relfe, as trustee, "to hold and dispose of the same for the use and benefit of the *creditors* and policy-holders of said defendant and such other persons as are or may be interested in such assets." (p. 32 of transcript). As the suit was thus *abated* as to the Life Association of America, and the *legal* title to all its assets vested in appellant Relfe, he thereby became a necessary party to this suit; and if he had not voluntarily appeared and asked to be made a party defendant, the appellees would have been constrained to have taken the proper legal steps to bring him in and substitute him as the successor to, and legal representative of, the Life Association of America, *dissolved*, in order to divest him of the legal title to the assets of the Life Association of America, vested in him "in fee simple and absolutely" by the decree of the Circuit Court of the City of St. Louis, in the State of Missouri. He could not have been divested of the legal title to said assets by a judicial proceeding in the courts of Louisiana in any other way.

Gardner v. Brown, 21 Wall. 26.
Coal Co. v. Blatchford, 11 Wall. 172.

The *dissolution* of the Life Association of America was suggested, and the decree of the Circuit Court of the City of St. Louis was filed on the 17th day of November, 1879, only twelve days after the commencement of this suit, and appellant Relfe was made a party defendant. If he had not thus voluntarily appeared, all further proceedings by the State court would have been void. The dissolution of the corporation operated its legal death in the State of Missouri, wherein it had been created and organized; and neither the Legislature of Louisiana, nor its courts could keep it alive.

Farmers and Mechanics' Bank v. Little, 8 Watts & S. 277.

As it was legally dead, the State court lost jurisdiction over it, and had no more authority to render a judgment against, it or take any proceedings against it, than it would against a *dead* man. Such judgment or proceedings would have been void, if the suit had not been revived against its legal representative.

Farmers and Mechanics' Bank v. Little, 8 Watts & S. 277.

National Bank v. Colby, 21 Wall. 609.

Scanlan v. Crawshaw, 5 Mo. Appeal, 337.

It follows then, that as appellant Relfe was the legal representative of this dissolved corporation, he was not only a proper, but a necessary party to this suit. And being a citizen of the State of Missouri, he, not only at the time of his becoming such legal representative, but also at the time of the commencement of this suit, possessed the *personal* qualifications necessary to entitle him to remove this suit from the State into the Federal court. The petition for removal in this case is based on the *citizenship* of the parties. It is alleged, in appellant Relfe's petition for removal (p. 16, transcript), "that the *controversy* in said suit is between citizens of different States, and that the petitioners (Relfe and the Life Association of America), at the time of the commencement of this suit, were, and still are, citizens of the State of Missouri, and that Samuel E. Rundle and Helen Rundle, his wife, were then, and still are, citizens of the State of Louisiana." Says Mr. Chief Justice Waite, in delivering the opinion of the court in the case of Amory v. Amory (95 U. S., 186): "Where the jurisdiction of the courts of the United States depends upon the citizenship of the parties, it has reference to the parties as persons. A petition for removal must, therefore, state the personal citizenship of the parties, and not their *official* citizenship, if there can be such a thing."

Again says Chief Justice Waite, in delivering the opinion of the court, construing the old twelfth section of the Judi-

ciary Act of 1789, in the case of Insurance Co. v. Pechner, (95 *id.* 183): "Clearly, this has reference to the citizenship of the parties when the suit is begun; for the language is, 'If a suit be *commenced* by a citizen of the State in which the suit is brought against a citizen of another State, the defendant may, *when he enters his appearance*, petition for its removal.' The phraseology employed in the acts of 1866, 14 Stat. 307, 1867, *Id.* 558, and 1875, 18 *Id.* 470, and in the Revised Statutes, sec. 639, is somewhat *different*, and we are not now called upon to give a construction to the language used. As to the act of 1789, we entertain, no doubt, in this particular.

"The right of removal is statutory. Before a party can avail himself of it, he must show upon the record that his case is a case which comes within the provisions of the statute. His petition for removal, when filed, becomes a part of the record in the cause. It should state facts, which, taken in connection with such as already appear, entitle him to the transfer. If he fails in this, he has not, in law, shown to the court that it cannot 'proceed further with the cause.' Having once acquired jurisdiction, the court may proceed, until it is judicially informed that it power over the cause has been suspended."

Now if the petition in this case for removal had been presented under the old Judiciary Act of 1789, it would have been in strict conformity to it, and would have entitled the appellant, Relfe, to a removal. But grounds for removal have been added and enlarged under the acts of 1866, 1867 and 1875, and he fills the standard, as fixed by the act of 1875, to the fullest extent, and, therefore, he is entitled to a removal in this case.

The Life Association of America, prior to its dissolution, was entitled to remove this suit from the State court into the Federal court on the ground, that it was a corporation created and organized under the laws of the State of Missouri, and had its chief office and place of business in that State. And, among other things, the decree of the Circuit

Court of the City of St. Louis, in the State of Missouri, expressly provided, "That he may institute, maintain and defend, either in his own name, as Superintendent of the Insurance Department of the State of Missouri, or *in the name of The Life Association of America*, where that shall be deemed by him advisable, any and all actions at law or suits in equity in the courts of this, or of any other State, or of the United States, affecting the assets of said defendant, or the rights and claims of its policy-holders through it, with power to prosecute, defend and continue all suits brought by or against said defendant, whether heretofore or hereafter commenced, and whether in the name of said defendant or otherwise." (p. 33 of transcript.)

If there were any technical objections to the removal of this suit in appellant Relfe's name, then the petitions (pp. 16 and 29, of transcript), are in the proper form to entitle the Life Association of America, and its temporary agent or receiver Frost, to a removal.

Gates v. Goodloe, 101 U. S., 612.

"The personal citizenship" of appellant Relfe, being in the State of Missonri, the mere fact of his being an officer of the State of Missouri, with the trust of winding up this dissolved corporation imposed on him, by the decree of the Circuit court of the City of St. Louis in that State, in pursuance of the statutes thereof, does not divest him of his right to remove. He is thereby constituted a *trustee* of an express trust and, as such, he has the right to remove. It is his personal citizenship, and not his official citizenship, which confers the right to removal.

Amory v. Amory, *supra*.
Coal Co. v. Blatchford, 11 Wall, 172.
Chappedelaine v. Dechenaux, 4 Cr., 306.
Sage v. Central R. R. Co., 93, U. S., 412.
Gates v. Goodloe, 101 *Id.* 612.

A deputy internal revenue collector is entitled to a removal as against a sovereign State, when he is indicted, in

the courts thereof, for an alleged murder committed within its jurisdiction, whilst in the discharge of his *official* duty.

Tennessee v. Davis, 100 U. S., 257.

If the accused in this case were entitled to a removal, *a fortiori*, should appellant Relfe be entitled to a removal.

John R. Fell was only a *formal* party. He was not even a necessary party. He was only an *agent* of the Life Association of America. No relief is prayed or sought against him—only a discovery of the contract upon which appellees base their right to retain the assets of the Life Association of America in Louisiana. His deposition could be taken for this purpose, and he could be examined at length, and the facts much more satisfactorily drawn out than they could be in a mere formal answer to appellees' bill. There is, and there can be, no controversy between him and the appellees. This controversy was between them and the Life Association of America and its temporary agent or receiver, D. M. Frost, (who was appointed under and whose powers were defined by Sec. 604 Rev. Stat. of Mo. 1879, quoted *supra*), until the dissolution of the former on the 10th day of November, 1879, and since then between appellees and appellant Relfe, as the successor to, and legal representative of, the Life Association of America.

Wood v. Davis, 18 How. 467.

"Full faith and credit" and "effect" can only be given to the decree of the Circuit Court of the City of St. Louis, in the State of Missouri, by recognizing appellant Relfe as holding the legal title to that part of the assets of the Life Association of America in Louisiana, and allowing him, in the language of said decree to "forthwith take possession of all the assets, books, papers, choses in action and effects of said defendant, whether situate in this State or elsewhere, and proceed to collect, adjust and settle the debts and claims due said defendant * * * * to hold and dispose of the same for the use and benefit of the creditors and policy-holders of said defendant and such other persons as are or may be interested in such assets."

Now we have seen what is "the effect" which said decree has in the State of Missouri. Under the constitutional provision heretofore cited, it is entitled to have the same "faith and credit" given to it in the courts of Louisiana, and to have the same "effect" therein as it has "by law or usage" in the courts of Missouri. Have the courts of Louisiana any authority to ignore the trust reposed in, and committed to, appellant Relfe by said decree, by practically displacing him and appointing a receiver of their own to take charge of and administer this trust estate for the exclusive benefit of policy-holders of the Life Association of America resident in Louisiana? By the Statute of Missouri applicable to Insurance Companies of that State, upon the dissolution of a company, the winding up and settlement of its affairs devolve upon the Superintendent of the Insurance Department. He thus becomes the legal successor of the corporation, as in other States the last Board of Directors are constituted trustees for the settlement of the affairs of dissolved corporations. Have the courts of Louisiana any authority to ignore this provision, and practically remove the statutory successor (who is neither assignee nor receiver as those words are used), and provide a totally different scheme for the settlement of the affairs of the corporation? It is affirmed with emphasis that they have not. Appellant Relfe has a constitutional right guaranteed to him. This right cannot be ignored nor denied to him by the courts of Louisiana any more than it can be by the courts of Missouri. *Fides servanda est*, by the courts of Louisiana as well as the courts of Missouri.

Christmas v. Russell, 5 Wall. 290.
Mills v. Duryee, 7 Cranch, 483.
Hampton v. McConnell, 3 Wheat. 8234.

Independent of the constitutional provision which requires "full faith and credit," and the same "effect" to be given to said decree, by the courts of Louisiana, as it has by law

or usage in the courts of Missouri; the legal title of appellant Relfe, should, by comity, have been recognized by the courts of Louisiana. Says Mr. Justice Bradley, in the case of Doyle v. Continental Insurance Co., 94 U. S., 544:

"The conditions of society and the modes of doing business in this country, are such that a large part of its transactions is conducted through the agency of corporations. This is especially true, with regard to the business of banking, insurance and transportation. Individuals cannot safely engage in enterprises of this sort, requiring large capital. They can only be successfully carried out by corporations, in which individuals may safely join their small contributions without endangering their entire fortunes. To shut these institutions out of neighboring States, would not only cripple their energies, but would deprive the people of those States of the benefit of their enterprise. The business of insurance particularly, can only be carried on with entire safety, by scattering the risks over large areas of territory, so as to secure the benefits of the most extended average. The needs of the country require that corporations, at least those of a commercial or financial character, should be able to transact business in different States. If these States can, at will, deprive them of the right to resort to the courts of the United States, then, in large portions of the country, the government and laws of the United States may be nullified and rendered inoperative, with regard to a large class of transactions constitutionally belonging to their jurisdiction.

The whole thing, however, free from intentional disloyalty, is derogatory to that mutual comity and respect, which ought to prevail between the State and the general governments, and ought to meet the condemnatiou of the courts, whenever brought within their proper cognizance."

No narrow-minded or contracted ideas about State lines, or the extra territorial operation of the laws of one State within another State, should be applied in a case of this kind. The Life Association of America was permitted by the laws of Louisiana to do business therein. It was per-

mitted, and did business in nearly every other State in this Union. It might operate gross injustice to the policy-holders in the other States, to allow the Louisiana policy-holders to sequestrate and appropriate all its assets in Louisiana to the payment of their policies alone. Equality is equity. The appellees seek by this suit to destroy the equality provided for by the Statutes of the State of Missouri, and the decree of the Circuit Court of the City of St. Louis, in the State of Missouri. This corporation is insolvent and dissolved. Its assets, not only in Louisiana, but in every other State, are a *trust* fund for the benefit of *all* its creditors and policy-holders. This just principle of equality, upon which this decree is based, should not be permitted by this court to be ignored and disregarded, as it is sought to be by the appellees' bill in this case. There is a larger and broader comity extended by the courts of this country to the citizens and subjects of *foreign* nations even, than there is by the appellees' bill to the citizens of other States. The citizens of otherStates who are policy-holders in the Life Association of America are equally interested in this trust fund with the policy-holders therein resident in Louisiana. They should not be treated worse than foreigners. They are citizens of the same country and government with the Louisiana policy-holders, and through the Constitution of their government they are entitled to have the principle of equality, upon which the decree of the Circuit Court of the City of St. Louis, in the State of Missouri, is based, observed and carried out in good faith.

When the Louisiana policy-holders took their policies in the Life Association of America, they did so with the full knowledge, that in certain contingencies the franchises of the Life Association of America might be arrested, and itself dissolved and wound up.

Mumma v. Potomac Co., 8 Pet. 281.
Rorer on Inter-State Law, 78.
Thompson's Stockholder's Liability, § 3.

We are aware that this court has held that an administrator appointed in one State, cannot maintain, on that appointment, an action in another State, to enforce an obligation due his intestate, (Noonan v. Bradley, 9 Wall. 394.)

But this principle is not applicable to the case under consideration. This is not a case of intestacy of a natural person. It is the case of a corporation created and organized under the laws of the State of Missouri and allowed by the laws of Lonisiana to do business therein. Appellant Relfe is the trustee of this corporation. He holds the *legal* title to all its assets under and by virtue of the decree of the Circuit Court of the City of St. Louis in the State of Missouri, and a regular deed of conveyance, assignment and transfer of said assets, real, personal and mixed, made by said corporation through its proper officers to him. Even if the decree did not vest the legal title to the assets in Louisiana for want of authority in the court passing it, then it is affirmed that said conveyance, assignment and transfer did (*vide* appellant Relfe's affidavit, p. 12, *ante*). He was thus constituted a *trustee* of an express trust; and possessing the *legal* title, he had the right, incident to the holder of the legal title, to maintain or defend any suit anywhere which is necessary to protect his title. Whilst he takes the title clothed with a trust, nevertheless the legal title adheres to and is vested in him, and it is by virtue of his personal ownership that he has the right to appear as a party in this suit and protect his title; and no court, whether in Missouri or elsewhere, has any right to divest him of the trust confided to him, in the absence of mismanagement, waste or a breach of trust of some kind.

Vose v. Reed, 1 Woods, 647.

There are assets of this corporation in the greater part of the States of this Union. Appellant Relfe is an officer of the State of Missouri, by which he is paid a salary. (§§ 5924, 6050 Revised Statutes of Missouri). He gets no additional compensation out of the assets of this corporation for his services in winding it up. The equities

of all parties interested in these assets can be much more efficiently and justly administered and applied under one administration, than by twenty odd administrations in as many different States, all acting independenly of each other. The assets would be nearly all eaten up by so many separate and independent administrations. Such will be the practical result, if the theory and position of the appellees obtain. *Cui bono*, then, have so many administrations on the assets of this one estate, when it can be so much more efficiently, economically and justly administered under one administration? Justice, equity, economy, efficiency, all say that there should be but one administration of the assets of this dissolved corporation, and that Appellant Relfe should be allowed to carry it out in the courts of Louisiana, whenever it shall be necessary, as well as in the courts of Missouri.

This was a *Mutual* Insurance Company (*Vide* Appellant Relfe's affidavit, p. 10, *ante*). It did business entirely and solely on the *Mutual* plan. It had no stock-holders. Every policy-holder was a *member* of the corporation. No person could become a member without becoming a policy-holder. All the members stood on the footing of absolute equality in regard to their rights in the corporation. No preferences were allowed or permitted by the law under which it was created and organized. (~~Wilson v. Hampden Fire Ins. Co., 4 R. I. 150;~~ Evans v. Trimountain Mut. F. Ins. Co., 9 Allen, 329.) If the appellees were to succeed in sequestrating and having the assets of this corporation in Louisiana appropriated and applied exclusively to the payment of their policies it would overturn and destroy this principle of equality among the members of this corporation, and the appellees would thus get an unfair advantage and an unjust preference over the other members. And this result would be effected through the instrumentality of a separate and independant administration on the assets in Louisiana, carried on under the authority, direction

and control of the courts of Louisiana. Will this court tolerate such injustice as this?

The members of this corporation stood as *quasi* partners to one another. There would be as much justice or propriety for certain members of a great partnership which did business in different States and became insolvent, and happened to have assets in a State wherein such members resided, to sequestrate and appropriate such assets to the payment of their claims exclusively, as for the appellees to maintain their claims in this suit.

The intimate union of these States as members of the same great political family, and the commercial intercourse and business and dealings of the citizens of one State with the citizens of other States, all require that this most enlarged, enlightened and liberal comity should be extended and exercised in cases of this kind.

Bank of Augusta v. Earle, 13 Pet. 590.
Taylor v. Life Association, 11 Cent. L. J. 206.
Cowell v. Springs Co., 100 U. S. 55.

Says Mr. Chief Justice Taney, in delive
the court in the case of Bank of August
590, "that the rules of comity between
not apply to the States of this Union; th
one another no other rights than those th
Constitution of the United States, and that the courts of the general government are not at liberty to presume, in the absence of all legislation on the subject, that a State has adopted the comity of nations towards the other States as a part of its jurisprudence; or that it acknowledges any rights but those which are secured by the Constitution of the United States. The court think otherwise. The intimate union of these States as members of the same great political family;—the deep and vital interests which bind them so closely together, should lead us, in the absence of proof to the contrary, to presume a greater degree of comity, friendship and kindness towards each other, than

we could be authorized to presume between foreign nations. And when (as without doubt must occasionally happen), the interest or policy of any State requires it to restrict the rule, it has but to declare its will, and the legal presumption is at once at an end. But until this is done, upon what grounds could this court refuse to administer the law of international comity between these States? They are sovereign States, and the history of the past, and the events which are daily occurring, furnish the strongest evidence that they have adopted towards each other the laws of comity in their fullest extent."

Another reason why the Courts of Louisiana should not be allowed to take jurisdiction and control over the assets of this corporation in Louisiana is, that *all* its assets were taken possession of by the Circuit Court of the City of St. Louis, in the State of Missouri, on the 14th day of October, 1879, through its temporary agent, Frost, and it has been continued by appellant Relfe, since the 19th day of November, 1879. (*Vide* affidavit of appellant Relfe, p. 11, *ante*, and decree transcript, p. 32 *et seq.*) And said court having once acquired jurisdiction of said assets lawfully, its possession should not be interfered with by the courts of other States. This is another reason why "full faith and credit" and "effect" should be given to the decree of the Circuit Court of the City of St. Louis, in the State of Missouri.

Buck v. Colbath, 3 Wall. 334.
Freeman v. Harve, 24 How. 450.
Taylor v. Caryl, 20 *Id.* 583.

Walter B. Wilcox, the *receiver* in this suit, appointed by the State court, had no right or authority to appear in the Federal court and move that court to remand this suit to the State court. He was no party to said suit; nor did he have such interest or sustain such relation to it; nor did he stand in such *privity* with any party to it, as to entitle *him* to make such motion. There would be as much legal pro-

priety for a sheriff of a State court, to whom a writ of attachment had been issued and who had levied it upon property of a non-resident defendant who saw proper to exercise his constitutional right of removal to have followed the case into the Federal court and there moved the court to remand the case to the State court, as there was for *Receiver* Wilcox to have appeared in the court below and moved that court to remand this suit. He was simply the *officer* of the court which appointed him, just as the sheriff or clerk is, and had no authority to take any steps in the suit, except such as he was directed by his court to take.

National Bank v. Grand Lodge, 98 U. S. 123.

It follows, then, that the order of the court below, in sustaining the motion of Walter B. Wilcox, *receiver* in this suit, to remand it, and in remanding it, was erroneous, and that it should be reversed and remanded with direction to said court to re-instate said suit on its docket, and proceed therein according to law; and that all proceedings in this suit in the State court, after the petition for removal was filed, on the 28th day of November, 1879, be declared null and void, and be for naught held and esteemed.

Respectfully submitted,

JAMES CARR and
GEO. D. REYNOLDS,
Solicitors for Appellants.

OFFICE SUPREME COURT U.S.
FILED
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JAMES H. McKENNEY, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1880.

[No. 897.]

LIFE ASSOCIATION OF AMERICA AND WILLIAM S. RELFE, as Superintendent of the Insurance Department of the State of Missouri, in charge of the LIFE ASSOCIATION OF AMERICA, Dissolved, *Appellants*,

vs.

SAMUEL E. RUNDLE AND HELEN RUNDLE, *Appellees*.

BRIEF FOR APPELLEES.

(*Submitted under the 20th Rule.*)

ARMAND PITOT,
Solicitor for Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1880.

LIFE ASSOCIATION OF AMERICA AND WILLIAM S. RELFE, as Superintendent of the Insurance Department of the State of Missouri, in charge of the LIFE ASSOCIATION OF AMERICA, Dissolved, *Appellants*,

vs.

SAMUEL E. RUNDLE AND HELEN RUNDLE, *Appellees*.

Appeal from the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR APPELLEES.

This is an appeal from a judgment of the Circuit Court of the United States, for the Fifth Circuit and District of Louisiana, sustaining a motion to dismiss the cause from said Court, and strike it from the docket thereof.

The grounds of said motion to dismiss, are as follows:

1st. That this Court is without jurisdiction, either of the person or the subject matter.

2d. That said William S. Relfe, Superintendent of Insurance for the State of Missouri, has no standing in this Court, being a creature of the State of Missouri, and without capacity to sue in this Hon. Court, or to remove causes hereto, under the Acts of Congress.

3d. That this cause was improperly removed from the Fifth District Court, for the Parish of Orleans.

4th. That said Fifth District Court having taken jurisdiction, and appointed a receiver to take charge of the property, this Court can not interfere with the possession of the receiver of the said Fifth District Court. (See Record, page 25).

It will be perceived from the foregoing, that the principal ground of the above motion, to dismiss, and remand the cause, is, that the Circuit Court of the United States has no jurisdiction of the parties.

The petition for the removal of this case is based upon the allegation, (Record. pages 16, 29 and 30), that the controversy in said suit is between citizens of different States, and that the petitioners, at the time and commencement of this suit were, and still are, citizens of the State of Missouri; and that Samuel E. Rundle, and Helen Rundle, his wife, were then, and still are citizens of the State of Louisiana; and your petitioner William S. Relfe, states that he is the Superintendent of the Insurance Department of the State of Missouri.

This petition is founded on the Act of March 3d. 1875, which provides: "First when the suit is against an alien, or is by a citizen of the State wherein it is brought, and against a citizen of another State, it may be removed on the petition of such defendant."

This right of removal is statutory. Before a party can avail himself of it, he must show upon the record his is a case which comes within the provisions of the statute.

The petition filed in the Fifth District Court, Parish of Orleans, (Record, pages 16, 29 and 30), shows that Rundle and wife are citizens of Louisiana; and that D. M. Frost and L. E. Alexander, defendants, are citizens of Missouri; and that John R. Fell resides at New Orleans, Louisiana. They come within the rule of the case of Ober v. Gallagher, 93d U. S. S. C. R. 204.

For the doctrine, that all parties should join in the petition, we refer to Peterson v. Chapman, 13th Blatchford, 395.

William S. Relfe was not a party to the suit, originally instituted in the State Court; he was made a party on motion, (Record, page 13). It is an informal proceeding to make a party to a cause in that way, as was said in the case of Bank v. Turnbull & Co., 16th Wallace, 194. "It may well be doubted, whether so informal a proceeding as that presented by this record, is a "*suit*" within the meaning of the Act of Congress, under which the right of removal was claimed and allowed. And they refer to West v. Aurora City, 6th Wallace, 139.

It is not an intervention under the State practice.

W. S. Relfe appears as a legal representative of a dissolved corporation; with him in the capacity of his "personal citizenship," (to use a term of Chief Justice Waite, in the case of Amory v. Amory, 95th U. S. S. C. R. 187), we are not contending. He alleges his official capacity as legal representative of said company; and he claims to appear and resist the suit, as a public officer of the State of Missouri.

There is no extra-territorial jurisdiction in the Circuit Court of St. Louis, that can clothe W. S. Relfe with authority to collect property through the Courts of Louisiana, when creditors there are seeking to subject the property to the payment of their debts. See the case of Aspden v. Nixon, 4th Howard, 498.

Under the statute of the State of Missouri, W. S. Relfe is only an officer for the Court, for the State of Missouri.

In the case of Booth v. Clark, 17th Howard, 338, the Su-

preme Court of the United States says: "He has no extra-territorial power or official action; none, which the Court appointing him can confer, with authority to enable him to go into a foreign jurisdiction, to take possession of the debtors' property; none which can give him, upon the principle of comity, a privilege to sue in a foreign Court, or another jurisdiction as the judgment creditor himself might have done, where his debtor may be amenable to the tribunal which the creditor may seek."

The courts of Missouri follow the doctrine in Booth v. Clark, just above quoted. *In re* Insurance Company v. Needles, 52d Mo. 1, they followed Booth v. Clark, and laid down the rule, that the receiver can not sue in a foreign jurisdiction, for the property of the debtor.

Under the article 1200 of the Revised Civil Code of Louisiana: "The succession of persons, domiciliated out of the State of Louisiana, and leaving property in this State at their demise, shall be opened and administered upon as are those of the citizens of the State."

In the case of The Succession of Milton Taylor, 23d La., A. R. page 22, the Supreme Court of Louisiana held that "a dative testamentary executor, who had been appointed according to the laws of another State of the Union, in place of the executor named in the will who declines to serve, can not be appointed dative testamentary executor to administer property of the succession situated in this State. In such a case, the public administrator for the Parish, where the property belonging to the succession is situated, must be appointed to administer it."

By the Revised Statutes of Louisiana, section 3677, the succession of persons domiciled out of the State of Louisiana, and leaving property in this State at their demise, shall be opened and administered upon, as are those of the citizens of the State."

The appointment of a judicial factor or administrator, by a foreign court of justice, confers no power upon such judicial factor to act in Louisiana, upon the simple registry of

the decree of the foreign tribunal for his appointment. 15 La. An. 405, Henderson v. Rost.

The powers of administrators appointed in different States extend only to the limit of the sovereigns creating them, and that neither allows them to intermeddle with any assets within their respective jurisdictions. 17 La. An. 16, Burbank v. Payne & Co.; 16 La. An. 42, 8 L. 588, 2 N. S. 20.

When a person dies, leaving property in two or more States, his property in each is considered a separate succession, for the purpose of administration, the payment of debts, and the decision of claims of parties asserting title thereto, and the power of administrators appointed in different States, extends only to the limits of the sovereigns creating them. 17 La. An. 15; 23 La. An. 23; Succession Milton Taylor, R. S. 1870, section 3,677.

An executor residing in a foreign country, or in another State, cannot receive letters of executorship from the Courts of Louisiana without giving bond. 21 La. An. 394, Succession Young.

A merely auxiliary proceeding, by which a third person comes in by way of injunction to protect his property from being seized and sold under a judgment to which he was not party, is not removable, under the Act of Congress of March 3, 1875, from the State to the Federal Court. Watson v. Bondurant, 30th Louisiana Annual Reports, 1.

An administrator appointed in one State cannot, by virtue of such appointment, maintain an action in another State, in the absence of a statute of the latter State, giving effect to that appointment to enforce an obligation due his intestate. If he desires to prosecute a suit in another State, he must first obtain a grant of administration therein, in accordance with its laws. Noonan v. Bradley, 9th Wallace, 394.

It is true, if any portion of the estate is situated in another country, he cannot recover possession by suit without taking out letters of administration from the proper tribunal in that country, as the original letters can confer

upon him no extra-territorial authority. The difficulty does not lie in any defect of title to the possession, but in a limitation or qualification of the general principles in respect to personal property by the comity of nations, founded upon the policy of the foreign country to protect the interests of its home creditors. 9th Wallace, 742, Wilkins v. Ellett.

In the case Dixon's Executors v. Ramay's Executors, 3d Cranch, 319, Marshall, C. J., as the organ of the Court, said: All rights to personal property are admitted to be regulated by the laws of the country in which the testator lived, but the suits for those rights must be governed by the laws of that country in which the tribunal is placed. No man can sue in the Courts of any country, whatever his rights may be, unless in conformity with the rules prescribed by the laws of that country. See also Vaughan v. Northup, 15th Peters, 1.

In conclusion, we humbly submit that Wm. S. Relfe appears in this case as Superintendent of the Insurance Department of the State of Missouri, and that as such Superintendent, he is not a citizen, such as is contemplated in the Act of 3d of March, 1875, regulating the removal of causes from State Courts.

And from all the foregoing, we contend that the order appealed from should be affirmed.

Respectfully submitted,

ARMAND PITOT,

Solicitor for Appellees.